California Public Employees' Retirement System

2018 Assembly Bill 20 Legislative Report

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CalPERS' 2018 Legislative Report – G.C. § 7513.72 (Assembly Bill 20)
This report is provided by the California Public Employees' Retirement System (CalPERS) pursuant to the requirements of California Government Code (G.C.) § 7513.72, also known as Assembly Bill 20 (AB 20), regarding the Dakota Access Pipeline (DAPL).

AB 20 was enacted and signed by the Governor on October 8, 2017. AB 20 requires CalPERS to file a report with the Legislature and the Governor on or before April 1, 2018, outlining (1) a list of CalPERS' investments in companies constructing or funding DAPL; and (2) a list of the companies with which the Board has constructively engaged, including a detailed description of (A) staff's engagement activities with each company, (B) the results of the engagement, and (C) an evaluation of the efficacy of the engagement. The new law also recites the intent of the Legislature that CalPERS review and consider factors related to tribal sovereignty and indigenous tribal rights as part of the Board's investment policies related to environmental, social, and governance issues.

Background & Analysis
DAPL is a 1,172-mile underground pipeline that transports crude oil from the Bakken/Three Forks area in North Dakota, through South Dakota and Iowa, to an oil tank farm in Patoka, Illinois. During the construction of the final section of the pipeline in North Dakota, more than one route was considered, including a route 10 miles north of Bismarck, North Dakota, and another route approximately half of a mile upstream from the Standing Rock Sioux tribe's reservation. Following concerns around the potential impact on drinking water quality around the town of Bismarck, the route near the Standing Rock Sioux tribe's reservation was selected. This decision was met with protest by the Standing Rock Sioux and Cheyenne River tribes due to the selected route's proximity to the tribes' water supplies, sacred sites, and treaty territory. Following delays, the final construction was completed and the pipeline is currently in operation.

At the February 13, 2017 Investment Committee meeting, over 50 individuals – representing environmental organizations, first nations, and other groups – exercised their right to public comment regarding DAPL. CalPERS' Board respectfully honored all such requests. Following public comment, the CalPERS Investment Committee Chair directed Sustainable Investment Program staff to explore engagement options around the DAPL issues consistent with CalPERS' Governance and Sustainability Principles (Principles). The Principles related to DAPL are the following:

- Universal Human Rights[1]: Express [our] the company's support for universal human rights, and particularly, those of our employees, the communities within which we operate, and parties with whom we do business.
- Stakeholder Relations[2]: CalPERS believes that corporations should strive for active cooperation with stakeholders. This cooperation will be most likely to create wealth, employment, and sustainable economies.
- Environmental Management Practices[3]: Good practices include development of robust policies and practices to address both risk and opportunity arising from environmental issues.

CalPERS staff reviewed its total fund portfolio exposure to DAPL and conducted the following activities around DAPL.

- Engaged the pipeline operator known as Energy Transfer Partners (ETP) including its investors.
- Engaged the banks financing DAPL and helped develop an Investor Statement to banks financing DAPL.
- Convened a multi-stakeholder briefing with the leadership of the Standing Rock Sioux Tribe to engage with the banks and shareowners.
- Supported shareowner proposals requesting Indigenous Peoples' rights policies and a report on environmental and social risk due diligence processes.
- Engaged with labor unions regarding human capital concerns.
- Engaged the Equator Principles Association, an organization that provides banks with best practice guidelines for environmental and social risks in project finance.

CalPERS' engagements did not have an impact on the route chosen for the pipeline. We were constrained by the lack of voting rights due to ETP being a master limited partnership. Therefore, CalPERS had to follow an indirect route, by engaging as shareowners of the banks financing the pipeline. We also engaged the Equator Principles Association, which most of the banks support. And a statement issued by the United Nations Special Rapporteur on Rights of Indigenous Peoples' encouraged the United States government to adopt the principle of "free, prior, and informed consent" when consulting with indigenous tribes on projects that could affect their rights such as DAPL.

Set forth below are key results related to DAPL:

[1] CalPERS' Governance and Sustainability Principles, Section B (Board Quality), #16(a) (Human Capital Management Practices – Universal Human Rights) (pg. 22)
[2] CalPERS' Governance and Sustainability Principles, Section D (Corporate Reporting), #5 (Stakeholder Relations) (pg. 31)
[3] CalPERS' Governance and Sustainability Principles, Section D (Corporate Reporting), #6 (Environmental Management Practices) (pg. 31)

- The United Nations Special Rapporteur on Rights of Indigenous Peoples' issued a statement calling on the United States government to adopt the principle of "free, prior, and informed consent" when consulting with indigenous tribes on projects that could affect their rights, such as DAPL.
- A U.S. federal judge ordered mandated spill reporting for Energy Transfer Partners, which includes input from the indigenous peoples to establish a response plan for Lake Oahe.
- The lead banks providing project finance for DAPL responded with the following:
    - Issued public statements to provide clarity on their DAPL involvement
    - Retained Foley Hoag to review the situation and provide recommendations for international industry best practices.
    - Engaged the Equator Principles Association requesting clarity on the application of the Equator Principles to projects that are in areas on the "designated country" list.
    - Wells Fargo reviewed its indigenous peoples' rights statement to ensure that its due diligence process includes a focus on indigenous communities, including whether they were properly consulted.
    - Several banks, such as BNP Paribas, DNB, and ING, sold their loans.
- The Equator Principles Association has opened a review of its guidelines to determine how it can provide better guidance for situations like this in the future.
- Significant vote support for shareowner proposals requesting disclosures on the due diligence process used to identify and address environmental and social risks, including risks associated with indigenous peoples' rights when reviewing potential acquisitions.

In addition, CalPERS staff is taking the opportunity to propose new language to the CalPERS Governance and Sustainability Principles (Principles) to make explicit that CalPERS' existing commitment to universal human rights includes the United Nations standards of "free, prior, and informed consent" being obtained ahead of projects having an impact on indigenous peoples.

CalPERS' Engagement Activities
Following the direction of the CalPERS Board related to DAPL, CalPERS staff reviewed the total fund portfolio exposure to DAPL and researched engagement options. At the CalPERS Investment Committee meeting on March 13, 2017, staff proposed a multi-stakeholder dialogue with the following to better understand the concerns relating to DAPL:

- Pipeline operator known as Energy Transfer Partners.
- Banks providing project finance.
- Stakeholders involved, such as the Standing Rock Sioux Tribe, labor unions, and other investors.

In addition, staff reviewed shareowner proposals related to DAPL at various companies focusing on indigenous peoples' rights and environmental risks. CalPERS supported shareowner proposals that were consistent with CalPERS' Governance and Sustainability Principles.

Pipeline Operator
Staff determined that the construction of DAPL was being undertaken primarily by Energy Transfer Partners and Sunoco Logistic Partners, L.P., two publicly traded master limited partnerships that merged on April 28, 2017 and are now one entity known as Energy Transfer Partners (ETP).

In addition to ETP, staff identified other corporate entities holding a minority ownership stake in DAPL, as follows:

- MarEn Bakken Company, LLC (MarEn): a joint venture between MPLX, L.P. and Enbridge Energy Partners, L.P.
    - MPLX, L.P. (MPLX) is a publicly traded master limited partnership formed in 2012 by Marathon Petroleum Corporation (MPC), a publicly traded company.
    - Enbridge Energy Partners, L.P. (EEP) is a publicly traded master limited partnership and subsidiary of Enbridge, Inc. (ENB), a publicly traded company.
- Philips 66 (PSX): a publicly traded company.

Most of the entities with investments in DAPL are master limited partnerships (MLPs). This is significant for execution of an engagement strategy, as these MLP structures do not provide investors with voting rights and are not required to have a standard annual general meeting with the opportunity for shareowners to vote on the Board of Directors or auditors, or put shareowner proposals forward. Hence, the Sustainable Investment Program staff developed a strategy focused on engaging the banks providing the financing for DAPL.

CalPERS engaged with ETP and the other corporate entities holding a minority ownership stake in DAPL. Table 1 of the Appendix provides details of CalPERS' engagement activities and outcomes with each company involved in the construction of DAPL.

In addition, CalPERS supported shareowner proposals submitted to Marathon Petroleum Corporation and Enbridge requesting that the companies prepare a report relating to the due diligence processes used to identify the environmental and social risks, including the risks associated with indigenous peoples' rights, when reviewing potential acquisitions. These proposals received a high level of support of 30%.[4] A similar shareowner proposal was submitted to Phillips 66, but later withdrawn in light of the company's commitment to provide additional information regarding its social policies and governance, including respect for human rights and indigenous peoples' rights.

Energy Transfer Partners filed a federal racketeering lawsuit in August 2017 against Greenpeace International, Earth First!, and other groups alleging that their actions increased the cost of constructing DAPL by at least $300 million and damaged ETP's "relationships with the capital markets . . . impairing access to financing and increasing [ETP's] cost of capital and ability to fund future projects at economical rates."

Banks Financing the Dakota Access Pipeline
Seventeen U.S. and international banks provided financing for the construction of DAPL. During initial due diligence staff determined that investors, led by Boston Common Asset Management, were coordinating an Investor Statement to the Banks Financing DAPL. The investor statement requested that banks address or support the tribe's request for a peaceful solution. CalPERS supported the investor statement and encouraged other investors to do so. The statement has been supported by 130 global investors, representing approximately $1.2 trillion in assets under management. Signatories to the statement include Storebrand Asset Management, Calvert

[4] According to Glass Lewis, "2017 Season Review of U.S. Shareholder Proposals", these shareowner proposals received the highest support of any human-rights-related proposal in 2017.

Research and Management, and The Office of New York City Comptroller. The statement highlighted the following:

- "Banks with financial ties to DAPL may be implicated in these controversies and may face long-term brand and reputational damage resulting from consumer boycotts and possible legal liability. As major shareowners of these banks, we are very concerned about the financial risks this poses to the investments we oversee and to those whom we serve as fiduciaries."
- "We call on the banks to address or support the Tribe's request for a reroute and to utilize their influence as a project lender to reach a peaceful solution that is acceptable to all parties, including the Tribe."

Many of the banks issued public statements highlighting their involvement in DAPL. The banks retained Foley Hoag LLP to provide a report, using DAPL as a case study, that considered international industry good practices (IIGP) for community engagement in the development of pipelines, specifically focused on indigenous peoples' rights. In May 2017, Foley Hoag released a summary of its final report and was asked to keep the full report confidential. The final report included recommendations for project sponsors on steps they can take above and beyond U.S. legal requirements. The final report also included general guidance to (1) assist companies building future pipelines in the U.S. in incorporating IIGP and (2) potentially help banks in evaluating whether to finance those projects. The public version of the Foley Hoag report highlighted the following:

- "Although U.S. law is generally robust, international law – and related IIGP – has developed rapidly in the recent years, particularly in the area of indigenous rights. U.S. law is less stringent than international standards in at least two vital ways.
    - First, IIGP offers more detailed guidance than U.S. law on what constitutes company-tribal consultation and offers a solid foundation for companies and potentially impacted tribes to develop strong working relationships, regardless of the government's level of involvement.
    - Second, IIGP calls for company-tribal consultation and even free, prior and informed consent (FPIC) in a significantly wider range of circumstances than under U.S. federal law. Under U.S. federal law, if a project is not sited on Indian country, tribal consent is almost never required."

In addition, the banks' public statements referenced the Equator Principles (EP) as their project-finance risk framework for evaluating the DAPL project, which for developed countries do not require FPIC. Fourteen of the 17 banks financing DAPL are EP signatories. The EP are a financial industry credit-risk framework for determining, assessing, and managing environmental and social risks in projects. The EP advise that "projects [in developing countries] with adverse impacts on Indigenous Peoples will require their FPIC." For developed (or "designated") countries, the requirement is for consultation. In addition, the EP require that the environmental impact assessments and stakeholder consultations be embedded into covenants for loans.

However, interpretation of the EP "designated country" provision led to the standards not being consistently applied. The "designated country" provision states these "countries deemed to have comprehensive environmental and social governance, legislation systems and institutional capacity designed to protect people and the natural environment." Therefore, according to the EP, projects located in a "designated country" could rely on domestic laws as an acceptable substitute for adhering to the requirement of FPIC. Since the United States is listed as a “designated country,” banks providing financing to DAPL adhered to U.S. law, which requires consultation instead of FPIC.

To address this disparate treatment in terms of the application of FPIC, 10 banks sent a letter to the EP Association expressing concerns regarding the reputational damage to banks and the EP due to the ”designated country” provision being applied to the DAPL project. The banks requested that the EP Association consider revisions to the EP to avoid similar situations in the future. The banks included BBVA, BNP Paribas, Credit Agricole, Intesa Sanpaolo, Natixis, and Société Générale.

The response from some of the banks was to sell their DAPL loans. Banks such as BNP Paribas, DNB, and ING decided to sell their respective loans in view of the reputational concerns associated with their involvement in a project that lacked adequate consultation with stakeholders such as indigenous peoples.

Investors also submitted a shareowner proposal in connection with Wells Fargo’s 2017 proxy statement, requesting that the company adopt a global policy regarding the rights of indigenous peoples, including respect for the FPIC of indigenous communities affected by the company’s financing activities. CalPERS had multiple conversations with Wells Fargo regarding the requests in the shareowner proposal and the company’s current indigenous peoples’ rights policy. In April 2017, CalPERS had multiple discussions with the bank regarding the requests in the shareowner proposal and the company’s existing indigenous peoples’ rights statement. Wells Fargo communicated that it had:

- Published frequently asked questions to provide clarity concerning its investment in DAPL.
- Enhanced its related policies to ensure its due diligence process included a focus on the impact on indigenous communities and whether they have been properly consulted.
- Reviewed its indigenous peoples statement with tribal leaders and other indigenous stakeholders to help guide its decision-making for projects that may affect indigenous communities.
- For projects that impact Indigenous Peoples, established a new requirement that customers must demonstrate alignment with the objects and requirements of International Finance Corporation Performance Standard 7 on Indigenous Peoples, including requiring free, prior, and informed consent.

CalPERS was encouraged of the significant progress made by the company, however we decided to vote for the shareowner proposal, which received 16% support. CalPERS has continued to monitor and engage with Wells Fargo to track further progress, and expects another shareowner proposal related to indigenous peoples’ rights to be submitted with the company’s 2018 proxy statement.

Table 2 in the Appendix provides details of CalPERS’ engagement activities and outcomes with each bank that financed DAPL.

Indigenous Peoples

On March 1, 2017, CalPERS cohosted – with Boston Common Asset Management, The Office of New York City Comptroller, and First Peoples Worldwide – an investor briefing for leaders of the Standing Rock Sioux tribe. The briefing was focused on the investment risks at stake and how the concept of “social license to operate” is challenging the business landscape for extractive and infrastructure industries using DAPL as a case study. The purpose was to provide the Standing Rock Sioux tribe an opportunity to express their concerns and perspectives directly to investors. The Standing Rock Sioux tribe informed attendees they support the pipeline construction to foster economic development, energy security, and independence. However, the tribe's concerns with the pipeline construction were specific to the final section's proximity to their water supplies, sacred sites, and treaty territories.

Labor Unions

CalPERS also engaged with the Laborers' International Union of North America (LiUNA), which issued a statement in support of the project. LiUNA shared concerns regarding environmental activists creating hostile working conditions for their members. LiUNA also participated in the CalPERS multi-stakeholder meeting with the Standing Rock Sioux tribe.

Equator Principles Association

To address the concern over the disparate application of the EP, on October 23, 2017, CalPERS and other investors representing approximately $2.67 trillion in assets under management signed an Investor Statement to the EP Association ahead of the 2017 Annual Meeting in Brazil. The statement requested a reroute of DAPL, highlighted issues that came to investors' attention during the DAPL controversy, and requested that these be addressed.

In addition, CalPERS wrote to the EP Association's Chair and Secretariat explaining our request that the EP be made consistent globally. CalPERS' letter highlighted the following:

- CalPERS' strong support for the integration of environment, social, and governance risks into investment strategy to foster sustainable investment that underpins the returns we rely upon as fiduciaries to pay pension benefits over the long term.
- CalPERS' request for the two-tier country designation to be retired. Harmonizing the requirements would provide clarity and consistency across markets.
- CalPERS' request that the EP Association establish a forum to facilitate a voluntary resolution of matters where there appeared to be a variety of interpretation regarding application of the EP.
- CalPERS' request for a more consistent approach to reporting by signatory banks regarding their use of the EP.

We were pleased to see that, in response to requests from members and others, the EP Association decided to review the EP following a stakeholder consultation. In the meantime, the EP Association will provide a clarification note on some aspects such as the "designated country" provision. CalPERS plans to contribute its comments to the consultation.

Engagement Results and Efficacy

CalPERS believes managing risk through corporate engagement is key to long-term performance, and serves as the foundation of our fiduciary duty to members and stakeholders. Engagement helps change behavior that we believe can affect a portfolio company's financial performance. When staff engages with portfolio companies and votes proxies, it has the potential to affect the portfolio's risk-return profile in a real and positive way.

Our engagements with the companies involved in the DAPL controversy were very informative and constructive. They highlighted the limitations of engagements under the MLP structures, where investors do not have voting rights. Staff was disappointed that the company constructing the pipeline did not select a route that was acceptable to all parties. However, we were encouraged to see the increased awareness of how sustainability is factored into bank finance, which may affect future project financing. The below highlights key results related to DAPL.

- The United Nations Special Rapporteur on Rights of Indigenous Peoples' statement encouraging the United States government to adopt FPIC principles when consulting with indigenous tribes on projects that could affect their rights, such as DAPL.
- Multi-stakeholder dialogue to discuss the various issues around DAPL that included indigenous peoples, project financers, laborer unions, and other companies involved in DAPL.
- The proactive response of the banks providing project finance for DAPL, which included:
    - Issuance of public statements to provide clarity on their DAPL involvement.
    - Retention of Foley Hoag to review the situation and provide recommendations for international industry best practices.
    - Engagement of the EP Association requesting consistent application of the EP to projects that are in areas on the "designated country" list.
    - A review by Wells Fargo of its indigenous peoples' rights statement to ensure that its due diligence process includes a focus on indigenous communities and whether they were properly consulted.
    - The sale, by some banks, such as BNP Paribas, DNB and ING, of their DAPL loans.
- The commitment of the EP Association to conduct a review of the EP to harmonize their application across all markets.
- Court-ordered spill reporting for Energy Transfer Partners, which included input from the involved indigenous peoples to establish a response plan for Lake Oahe.
- Significant vote support for shareowner proposals requesting disclosures relating to the due diligence process used to identify and address environmental and social risks -- including the risks associated with indigenous peoples' rights – when reviewing potential acquisitions.

CalPERS' Governance and Sustainability Principles
In response to the DAPL controversy and engagement findings, staff reviewed CalPERS' Governance and Sustainability Principles, which are the fundamental principles guiding our proxy voting and corporate engagement efforts. During this review, staff recommended inclusion of the principle of FPIC in the universal human rights section. These are expected to be considered by the CalPERS Investment Committee in March 2018.

Appendices

Table 1: Companies in which CalPERS has invested that have been involved in the construction of the Dakota Access Pipeline

Table 1		
	Company Name	**Engagement Activity and Outcome**
1	Energy Transfer Partners (ETP)	On February 15, 2017, investment staff initiated contact with ETP's VP of Investor Relations team via email requesting a conference call to discuss the DAPL situation. After multiple calls were rescheduled by ETP, staff spoke with the VP of Investor Relations on March 7th. The purpose of the conversation was to understand the process ETP undertook during its environmental and social risk assessment and its next steps for DAPL. The company stated the following: • The company undertook all consultations and assessments required by federal and state law. • The company considered the current route to be a passage that would cause less disturbance to sacred sites than alternate routes. • The company expected the pipeline to receive the necessary approvals from regulatory agencies for operations to start. On April 17, 2017, staff spoke to ETP's VP of Investor Relations regarding the merger with Sunoco Logistics Partners. The company explained the merger would strengthen its balance sheet and improve its credit profile. As of June 2017, ETP announced the DAPL was fully operational. In February 2018, CalPERS sent follow-up correspondence requesting a meeting with the company regarding the recommendations from the Foley Hoag report, and specifically whether the company planned on updating its policies in response to the DAPL controversy.
2	Enbridge, Inc.	On April 20, 2017, staff spoke with Enbridge, Inc.'s Director of Investor Relations and Chief Sustainability Officer to discuss the company's response to the recent DAPL situation. In addition, staff discussed a shareowner proposal on the 2017 proxy statement requesting the company to prepare a report to relating to the due diligence processes used to identify environmental and social risks, including risks associated with indigenous peoples' rights, when reviewing potential

Table 1		
	Company Name	**Engagement Activity and Outcome**
		acquisitions. Enbridge stated the following: • They were aware of the DAPL situation and were monitoring it closely. • They will provide additional information regarding their environmental and social risks procedures and processes, specifically related to indigenous peoples' rights. • They will conduct research to develop a set of principles on indigenous peoples' rights. This information is expected to be included in their next Corporate Social Responsibility Report anticipated to be released in 2018. Consistent with CalPERS' Governance and Sustainability Principles, CalPERS supported the shareowner proposal, which received 30.3% support. Enbridge has committed to keeping CalPERS informed of progress being made.
3	MPLX, L.P.	MPLX, L.P. (MPLX) is a publicly traded master limited partnership formed in 2012 by Marathon Petroleum Corporation, a publicly traded company. On April 7, 2017, staff spoke with Marathon Petroleum Corporation (MPC) Corporate Secretary and Director of Investor Relations to discuss the company's response to the recent DAPL situation. In addition, staff discussed a shareowner proposal on the company's 2017 proxy statement requesting that the company prepare a report relating to the due diligence processes used to identify environmental and social risks, including risks associated with indigenous peoples' rights, when reviewing potential acquisitions. MPC challenged the shareowner proposal with the Securities and Exchange (SEC) asking for it to be excluded from the ballot at the annual general meeting. The SEC ruled the proposal should be included in the 2017 proxy statement giving shareowners the ability to vote on the proposal. The company stated the following: • Their involvement in DAPL is through a master limited partnership, MPLX, that they established in 2012. MPLX owns a minority interest in DAPL with an approximately 9% stake through a joint venture investment. • They ensured that rigorous planning, permitting, and adherence to mandated U.S. federal,

Table 1		
	Company Name	**Engagement Activity and Outcome**
		state, and local laws related to human, cultural, and legal rights were carried out for DAPL. • When they make investment decisions in projects constructed by third parties, they employ subject matter expertise to review the permitting records and other available information for projects they are interested in. • They are aware of multiple consultations conducted by the U.S. Army Corp of Engineers, which included consultation with the Standing Rock Sioux tribe. Therefore, MPC felt the interests of the affected indigenous peoples and the environment were protected in relation to the DAPL project. Consistent with CalPERS' Governance and Sustainability Principles, CalPERS supported the shareowner proposal, which received 32% support. We expect the proponent of the shareowner proposal to re-file the proposal on the company's 2018 proxy statement.
4	Phillips 66	During the 2017 proxy season, staff monitored Phillips 66 for a potential shareowner proposal that was expected to be included in their 2017 proxy statement related to DAPL. The shareowner proposal was to request that the company prepare a report to identify environmental and social risks, including risks associated with indigenous peoples' rights. However, the shareowner proponent withdrew the proposal due to the company addressing their requests. Phillips 66 agreed to continue robust dialogue towards disclosing information regarding social policies and governance, including respect for human rights and indigenous peoples' rights. On November 7, 2017, staff spoke with the Investor Relations General Manager and Manager of Policy and Emerging Issues to discuss the DAPL situation and the company's commitment to review its policies regarding human rights, specifically indigenous peoples' rights.

Table 2: Companies in which CalPERS has invested that financed the construction of the Dakota Access Pipeline

Table 2		
	Company Name	**Engagement Activity and Outcome**
1	Bank of Tokyo	Bank of Tokyo Mitsubishi received a copy of the Investor Statement to Banks Financing the

Table 2		
	Company Name	**Engagement Activity and Outcome**
	Mitsubishi UFJ	Dakota Access Pipeline (Statement). The company did not respond to the Statement or make any public comments related to DAPL.
2	BayernLB	BayernLB received a copy of the Statement. BayernLB issued a public statement highlighting the following: • They are closely monitoring the DAPL situation. • They will use their influence where possible to reach an outcome that is accepted by all parties involved. • They will engage with German and international environmental and human rights organizations BayernLB also announced its decision to exit the financing at the earliest date possible under the loan agreement and to not participate in any future rounds of financing related to DAPL.
3	BancoBilbao Vizcaya Argentaria (BBVA)	BBVA received a copy of the Statement. BBVA issued a public statement highlighting the following: • BBVA's commitment to evaluating projects social and environmental risks before making a finance decision. • The company ensured the DAPL project finance transaction was evaluated under the Equator Principles guidelines, and in compliance with applicable laws and regulations. • Met with the Standing Rock Sioux tribe to hear their concerns. • They will continue to proactively review the DAPL situation to help resolve this matter in a respectful way that encourages ongoing dialogue. BBVA was a signatory to a letter to the EP Association.
4	BNP Paribas	BNP Paribas received a copy of the Statement. BNP Paribas announced its decision to sell its loan in DAPL. The company stated its decision to

Table 2		
	Company Name	**Engagement Activity and Outcome**
		sell its loan was made following a comprehensive review of the project including consultation with all relevant stakeholders involved. BNP Paribas explained that the sale signals their commitment to full and detailed stakeholder consultations on projects. BNP Paribas was also a signatory to a collaborative letter to the Equator Principles Association organized by some of the banks.
5	Citigroup	Citigroup received a copy of the Statement. Citigroup sent the investors that were signatories to the investor statement a letter regarding their involvement in DAPL. The letter was made public on their website and highlighted the following: • The project was reviewed by their Environmental and Social Risk Management Policy and the EP. • During the due diligence phase the company hired an independent consultant to review the permitting and approval process to confirm the project was compliant with U.S. laws. • The company met with a variety of stakeholders including human rights academics, non-governmental organization communities, and the Standing Rock Sioux tribe. • The company hired a third-party consultant to advise on strengthening their internal due diligence on social risk.
6	Credit Agricole	Credit Agricole received a copy of the Statement. Credit Agricole issued a public statement highlighting the following: • The process they took in evaluating the DAPL project. • The project was in compliance with all relevant laws and regulations, which allowed the loan to move forward, and limited their ability to voice any requests or changes to the pipeline route. • The company met directly with the representative from the Standing Rock Sioux tribe and tried to work with the borrowers to find an amicable solution. • They are committed to further researching the issue, not increasing its contributions to DAPL, and continuing to call for a peaceful solution.

<table>
<tr><th colspan="3">Table 2</th></tr>
<tr><th></th><th>Company Name</th><th>Engagement Activity and Outcome</th></tr>
<tr><td></td><td></td><td>They will engage with the EP Association to expand to all countries the principle of FPIC with affected community members.
Credit Agricole was a signatory to a letter to the EP Association.</td></tr>
<tr><td>7</td><td>DNB</td><td>DNB received a copy of the Statement.

DNB issued a public statement highlighting the following:
They reviewed various options for their investment in the project financing of DAPL and decided to sell its share of the loan.
They hope the sale of their stake will signal the importance of affected indigenous population is involved and their opinions are heard.
During their review, they met several interest groups including representatives from the Standing Rock Sioux tribe and the company building the pipeline.
They are committed to continue to try to influence the process, call for a lower level of conflict and conduct an independent investigation on how indigenous peoples’ rights are being safeguarded.</td></tr>
<tr><td>8</td><td>Industrial and Commercial Bank of China (ICBC)</td><td>ICBC received a copy of the Statement.

The company did not respond to the Statement or make any public comments related to DAPL.</td></tr>
<tr><td>9</td><td>ING</td><td>ING received a copy of the Statement.

ING issued a public statement highlighting the following:
The company reached an agreement to sell its loan related to DAPL, which followed a productive dialogue with the Standing Rock Sioux tribe.
The tribe responded to the sale positively and encouraged ING to encourage the buyer to support a respectful dialogue with the tribe and other affected groups.
The company is committed to advocating for indigenous peoples’ rights in project financing.</td></tr>
<tr><td>10</td><td>Intesa Sanpaolo</td><td>Intesa Sanpaolo received a copy of the Statement.</td></tr>
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Table 2		
	Company Name	**Engagement Activity and Outcome**
		Intesa Sanpaolo issued a public statement highlighting the following: • The company's commitment to social and environmental issues linked to the DAPL financing. • The DAPL project adhered to its Code of Ethics, which includes the Equator Principles and the UN Global Compact. Intesa Sanpaolo was a signatory to a letter to the EP Association.
11	Mizuho Bank	Mizuho Bank received a copy of the Statement. Mizuho Bank issued a public statement highlighting the following: • The company's commitment to upholding their social responsibilities. • They are continuing to encourage all parties involved to communicate in a collaborative, safe, and respectful dialogue. • The company will continue to review the situation carefully.
12	Natixis	Natixis received a copy of the Statement. The company was a signatory to the letter to the EP Association.
13	Société Générale	Société Générale received a copy of the Statement. Société Générale issued a public statement highlighting the following: • They support projects that are in compliance with all rules and regulations in the jurisdictions in which they operate and in accordance with the EP. • The company's decision to support the DAPL project was based on a comprehensive due diligence process. • The company had discussions with a representative of the Standing Rock Sioux tribe to better understand their concerns. • They will work with the EP Association to request to adapt the current risk assessment framework with regards to the rights of indigenous peoples in line with international best

Table 2		
	Company Name	**Engagement Activity and Outcome**
		practices. Société Générale was a signatory to a letter to the EP Association.
14	Sumitomo Mitsui Financial Group	Sumitomo Mitsui Financial Group received a copy of the Statement. The company did not respond to the Statement or make any public comments related to DAPL.
15	SunTrust Bank	SunTrust Bank received a copy of the Statement. The company did not respond to the Statement or make any public comments related to DAPL.
16	Toronto Dominion Securities	Toronto Dominion Securities received a copy of the Statement. Toronto Dominion Securities issued a public statement highlighting the following: • The company works with industry and environmental stakeholders and Indigenous communities to actively encourage dialogue to manage issues related to resource development. • They recognize FPIC of Indigenous Peoples is an important factor in securing a social license. • They advocate for the development of practical guidance for implementation of FPIC at a project level. • The company helped secure a human rights expert to advise ETP on human rights practices moving forward. • They developed a due diligence process to ensure they only finance responsible resource development that balances environmental, economic, and social considerations. • The company is a signatory to UN Principles for Responsible Investment and the EP. • As a lender, the company is not an investor in DAPL and thus not able to divest but rather is contractually obligated to fulfill the project financing agreement. • They are currently reviewing their due diligence policies and making improvements where appropriate based on the Foley Hoag findings.

Table 2		
	Company Name	**Engagement Activity and Outcome**
17	Wells Fargo	Wells Fargo received a copy of the Statement. Wells Fargo issued a public statement highlighting the following: • The company went through an extensive due diligence process including working with an independent engineer and the lenders' legal counsel to ensure the project complied with all local, state, and federal laws and environmental and cultural impacts were addressed. • The company's due diligence process identified compliance with the Equator Principles, which is the risk framework used for evaluating projects such as DAPL. • They enhanced their due diligence process in sectors subject to the company's Environmental and Social Risk Management policy. • They developed an indigenous peoples statement to help guide the company's decision-making for projects that may potentially impact indigenous communities. A shareowner proposal was filed at the company's 2017 annual general meeting requesting that the company adopt a global policy regarding the rights of indigenous peoples including respect for free, prior, and informed consent of indigenous communities affected by the company's financing. In April 2017, ahead of Wells Fargo's annual general meeting CalPERS staff had multiple teleconferences with the bank to discuss DAPL and the shareowner proposal. Wells Fargo communicated the following: • The company published frequently asked questions to provide clarity on their investment in DAPL. • Enhanced their policies related to ensure their due diligence process to include a focus on the impact on indigenous communities and whether they have been properly consulted. • Reviewed their indigenous peoples statement with tribal leaders and other indigenous stakeholders to help guide their decision-making for projects that may have an impact on indigenous communities. • For projects having an impact on indigenous peoples, the company established a new requirement that customers must demonstrate alignment with the objects and requirements of International Finance Corporation Performance Standard 7 on Indigenous Peoples, including requiring free, prior, and informed consent.

Table 2		
	Company Name	**Engagement Activity and Outcome**
		Though encouraged by the significant progress made by the company, CalPERS decided to vote for the shareowner proposal, which received 16% support. Wells Fargo's involvement in DAPL also prompted some Wells Fargo customers to reconsider their business with the company. For example, it was reported the City of Davis, San Francisco, Santa Monica, and Seattle voted to sever ties with Wells Fargo.

End of Mission Statement by the United Nations Special Rapporteur on the rights of indigenous peoples, Victoria Tauli-Corpuz of her visit to the United States of America

3 March 2017

In my capacity as United Nations Special Rapporteur on the rights of indigenous peoples, I carried out a visit to the United States of America from 22 February to 3 March 2017 to study the human rights situation of indigenous peoples, in particular with regard to energy development projects, and to follow up on key recommendations made by my predecessor, James Anaya, in both his 2012 report on the situation of indigenous peoples in the United States[1] and his 2013 report on indigenous peoples and extractive industries[2].

Over the last ten days I have travelled to: Washington, D.C.; Albuquerque, New Mexico; Window Rock, Arizona; Boulder, Colorado; Fort Yates, North Dakota; Fort Berthold, North Dakota; and Bismarck, North Dakota. I met with representatives of the federal government in Washington, D.C., including federal and regional representatives from the Army Corps of Engineers, the Department of State, the Department of the Interior, the Environmental Protection Agency, the Department of Health and Human Services, the Department of Energy, the Advisory Council on Historic Preservation and the Department of Justice. From the State of North Dakota, I met with the Governor, and representatives from the State Historic Preservation Office and the Commission on Indian Affairs. I also met with members of the legislative branch including the office of Senator John Hoeven, chair of the Senate Committee on Indian Affairs, and the office of ranking member Norma Torres of the House Subcommittee on Indian, Insular, and Alaska Native Affairs. Finally, I met with the Inter-American Commission on Human Rights.

I visited several tribal communities: the Navajo Nation in Window Rock, Arizona, and other tribes from the Southwest, including the Hopi Tribe, the Tohono O'odham Nation, and several of the Pueblos, as well as tribes from the Great Plains, including the Standing Rock Sioux Tribe, the Cheyenne River Sioux Tribe, the Yankton Sioux Tribe, and the Mandan, Hidatsa, and Arikara Nation. I also met with leaders from the Ute Mountain Ute Tribe, the Southern Ute Tribe, the Northern Ute Tribe of the Uintah and Ouray Reservation, and the Crow Creek Sioux Tribe. I received numerous requests for visits from indigenous communities throughout the country who described their difficult situations, but due to time constraints I was unable to visit them all. I did however hold the first-ever virtual consultation where I spoke with representatives from indigenous communities around the country including from Alaska and Hawaii. I also met with representatives of indigenous peoples and a wide range of civil society and human rights organizations working on indigenous peoples' rights.

I am grateful to the Government of the United States for its invitation and the full cooperation it has provided, and for allowing me to carry out my visit freely and in an independent manner. I would also like to express my deep gratitude to the representatives of indigenous peoples who invited me to visit their communities, to indigenous organizations, and to individuals who assisted me in organizing parts of my agenda, as well as to those who travelled from their communities in order to meet with me in various localities. This visit was made possible by a number of tribal nations, Native American individuals, and academic institutions that coordinated the regional consultations in various parts of the country and organized my agenda locally. These include the Councils of the Mandan, Hidatsa and Arikara Nation and the Standing Rock Sioux Tribe, the University of New Mexico, the University of Colorado, the Navajo Nation Human Rights Commission, Sitting Bull College, United Tribes Technical College, and the National Congress of American Indians. I am also grateful for the continued support of the Office of the High Commissioner for Human Rights.

During the course of my visit, I have been provided with a large volume of information from indigenous peoples, civil society organizations, and government representatives. Over the coming weeks, I will be reviewing this information in order to develop the report I will present to the United Nations Human Rights Council in September. The purpose of the report is to identify best practices and to assist tribal nations and the federal government to find solutions to the ongoing challenges that indigenous peoples face in the United States. In advance of this report, I will provide some preliminary observations and recommendations on the basis of my observations during my visit. These do not reflect the full range of issues that were brought to my attention, nor do they reflect all of the initiatives on the part of the United States government.

In the United States, engagement with indigenous communities in the context of resource extraction and infrastructure projects is governed by several domestic statutes, orders, regulations, policies, and protocols that specify procedures as to how federal departments and agencies are to conduct "government-to-government" consultations. During my visit, I studied energy development projects and impacts in part due to the issues surrounding the Dakota Access Pipeline, a $3.2 billion energy infrastructure project that crosses the Missouri River five hundred meters from the tribe's northern boundary.

From my conversations with people throughout Indian Country, I have learned that many of the complex issues that Native Americans face in the energy development context today are rooted in a long history of land and resource dispossession. In particular, the policy of allotment implemented by the Dawes Act in 1887 continues to have significant impacts on the development of energy resources throughout Indian Country. The different types of land ownership that exist within reservation boundaries make consistent resource management and regulatory control difficult and complex. Additionally, the checkerboard ownership of private land within reservations resulting from centuries-old policies allows for a double-edged sword whereby state governments may assert tax and regulatory authority over energy development within tribal lands. Meanwhile, the Bureau of Land Management and other federal agencies approve energy projects on lands within reservation boundaries without the consent or input of the tribal government.

More recent events affecting tribes in North and South Dakota continue to have ongoing impacts on the indigenous peoples in that region. The 1868 Treaty of Fort Laramie established the territory of the Great Sioux Reservation, an area whose boundaries have continually diminished in the last century and a half. For the Standing Rock Sioux Tribe and other tribes in North and South Dakota, the Pick-Sloan project, undertaken without tribal consultation, resulted in the construction of two dams by the United States Army Corps of Engineers. The purpose of the project was to control flooding of the Missouri River, to improve irrigation, and to provide hydroelectric power to the region. The project which created Lake Oahe and Lake Sakakawe submerged hundreds of miles of tribal lands and displaced thousands of indigenous people. The lands, adjacent to the Missouri River that were flooded in the construction of the project were the most fertile and abundant in wildlife. In displacing indigenous peoples from this watershed, the Corps failed to relocate Native American graves. The project has been described by the late scholar Vine Deloria, Jr. as "the single most destructive act ever perpetrated on any tribe by the United States." Most affected were the Mandan, Hidatsa, and Arikara Nation; the Standing Rock Sioux Tribe; the Cheyenne River Sioux Tribe; the Crow Creek Sioux Tribe; the Lower Brule Sioux Tribe; the Yankton Sioux Tribe; and the Nebraska Tribe. Though Congress provided monetary compensation to the tribes, the devastating effects of Pick-Sloan persist today in the form of poverty and continued conflicts over tribal lands. Particularly, the painful history of Lake Oahe has resurfaced in the ongoing Dakota Access Pipeline issue.

The United States’ commitment to a process of consultation with tribal governments presents opportunities for a more positive future and meaningful engagement. But challenges remain. The contemporary executive action that provides the most direct guidance on consultation with tribes, Executive Order 13175, while well intentioned has developed into a confusing and disjointed framework that suffers from loopholes, ambiguity, and a general lack of accountability. The regulatory regime has failed to ensure effective and informed consultations with tribal governments. The breakdown of communication and lack of good faith involvement in the review of federal projects has left tribal governments functionally unable to participate in consequential dialogue with the United States on projects affecting their lands, territories, and resources. As the United States indicated at the time it supported the Declaration, meaningful consultation with tribes, without the need for the tribes' agreement, is the preferred process of the United States in lieu of obtaining "free, prior, and informed consent" as set forth in the Declaration. Therefore, at a minimum, meaningful engagement and effective participation of tribal governments in assessing and reviewing extractive industry projects is a key element to the United States' meeting its human rights obligations as a signatory to the Declaration. Further, implementation of best practices about tribal consultation will ensure a more postive and profitable outcome for all stakeholders concerned.

Throughout the course of my mission, I heard universally that there is a pressing need for the federal government to precisely identify requirements for meaningful consultation with Indian tribes and to implement a consistent system across all federal agencies to ensure that consultation is undertaken with the goal of reaching agreement on projects and actions that affect indigenous peoples.

Many indigenous peoples in the United States perceive a general lack of consideration of the future impacts on their lands in approving extractive industry projects in particular, and a lack of recognition that they face significant impacts from development of not just their own, but neighbouring resources as well. In the context of the Dakota Access Pipeline, the potentially affected tribes were denied access to information and excluded from consultations at the planning stage of the project. Furthermore, in a show of disregard for treaties and the federal trust responsibility, the Army Corps approved a draft environmental assessment regarding the pipeline that ignored the interests of the tribe. Maps in the draft environmental assessment omitted the reservation, and the draft made no mention of proximity to the reservation or the fact that the pipeline would cross historic treaty lands of a number of tribal nations. In doing so, the draft environmental assessment treated the tribe's interests as non-existent, demonstrating the flawed current process. Although the final environmental assessment recognized the presence of the Standing Rock Sioux Tribe five hundred meters away, it dismissed the risks to the reservation and failed to mention any of the other tribes that traditionally used the territory. Without an adequate social, cultural or environmental assessment, and the absence of meaningful consultation with or participation by the tribes, the Corps gave multiple domestic authorizations permitting the construction of DAPL. One such authorization permitted construction beneath the Missouri River at Lake Oahe, while another authorized the discharge of materials and waste into waters throughout the tribes' ancestral lands.

Sadly, I found the situation faced by the Standing Rock Sioux Tribe is shared by many other indigenous communities in the United States, as tribal communities nationwide wrestle with the realities of living in ground zero of energy impact. The goal of tribal consultation is not simply to check a box, or to merely give tribes a chance to be heard. Rather, the core objective is to provide federal decision makers with context, information, and perspectives needed to support informed decisions that actually protect tribal interests. Treaty rights, the federal trust responsibility to tribes, environmental justice, and the principles enshrined in the Declaration all must be given life and meaning in federal decisions that impact tribes. Meaningful consultation has the potential to provide the solid foundation for such decisions, but federal agencies must be willing to recognize these principles and to work actively to put them into practice uniformly at the local, regional, and national level.

I also received reports during this mission regarding the criminalization of indigenous peoples asserting their right to protest in the now-world famous struggle of several tribes in opposition to the Dakota Access Pipeline. As is well-documented, the controversy surrounding the Dakota Access Pipeline has drawn thousands of people to the boundaries of the Standing Rock Sioux Reservation as they sought to protect the land and the water and uphold tribal sovereignty. While the actions taking place have been almost completely non-violent and peaceful, there has been a militarized, at times violent, escalation of force by local law enforcement and private security forces. As noted in my predecessor James Anaya’s previous reports, indigenous peoples have the right to oppose extractive activities that impact their land and resources free from reprisals, acts of violence, or undue pressures to accept or enter into consultations about extractive projects.

Finally, given the impacts on indigenous peoples of the Dakota Access Pipeline, I am deeply concerned by the January 24, 2017 presidential memorandum, granting the last easement necessary to begin construction of the Dakota Access Pipeline under Lake Oahe, and the Notice of Termination of the Intent to Prepare an Environmental Impact Statement. I am also concerned about similar impacts on indigenous peoples of the Keystone XL Pipeline and the January 24, 2017 executive order inviting TransCanada to resubmit its permit application to the State Department, while ordering the Secretary of State to expedite the review process.

Indian lands represent twenty percent of fossil fuel energy in the United States, and possess an even greater percentage of renewable energy potential. In addition to rich oil and gas deposits across Montana, North Dakota, Texas, Oklahoma, Utah, Colorado, Alaska, and New Mexico, Indian lands have incredible wind and solar potential, as well as hydroelectric and geothermal resources. A number of tribes have made entrepreneurial efforts to create tribal utilities for the benefit of their own and neighbouring communities, and are involved in a wide array of energy generation and transmission as large parts of tribal lands serve as thruways for the national electrical grid system. Indian tribes are owners and operators of new and emerging technologies, breaking the mold of reliance on outside entities. These examples and many more are proving that by exercising political sovereignty, indigenous peoples can approach energy resource development in a diverse way to support economic sovereignty.

During my mission, it became clear to me that the indigenous peoples in the United States have a vibrant and enduring relationship to their culture and sacred places. Tribal colleges are promoting indigenous languages and culture through their curricula and efforts are being undertaken to preserve stories and traditions. However, the ability for indigenous people to protect their sacred places is severely restricted by the United States legal system. Two important examples are Mount Taylor and Chaco Canyon. Mount Taylor represents one of the six Navajo sacred mountains and has been designated as traditional cultural property under United States law, while Chaco Canyon has been designated a UNESCO World Heritage Site for its vast cultural resources with deep significance to the Pueblo and Navajo people. Despite these designations, proposed mining and oil and gas projects threaten to desecrate these landscapes and indigenous lifeways as the federal government, rather than the indigenous peoples concerned, has final approval authority over the exploration and development of these areas. In such cases, it is imperative that the government consult or otherwise secure the free, prior, and informed consent of indigenous peoples, in order to protect the sacred and cultural resources of indigenous peoples, not only when projects impact their current lands, but also when projects impact homelands that are customarily and aboriginally owned, occupied, or otherwise used regardless of whether they are located on federal, state, or private lands. Domestic laws cannot define sacredness or confine the idea to specific dots on a map. Instead efforts must be made to amend existing laws governing the protection of sacred and cultural places to encompass an indigenous definition of sacredness as an interconnected landscape with unique relationships to the practice of religions, strengthening of community, livelihoods, subsistence, and gathering of traditional medicines and resources.

I learned from my visit that working closely with Tribal Historic Preservation Officers (THPOs) is a best practice to protect tribal cultural material. The THPOs I met with hold unique expertise and knowledge about the tribal lands, territories, and resources. Not only are they intimately familiar with the state and federal permitting and regulatory processes but, as one tribal THPO said, “our oral stories, star knowledge, and cultural history are what help me to evaluate what’s on the ground to know what not to disturb.” Tribal member employees have a connection to the lands that cannot be undervalued and must be leveraged to best protect and respect tribal lands. Tribal THPOs should thus have the ability to provide input on projects taking place on tribal territories outside of reservation boundaries given their deep knowledge of history and culture.

One recent example of proactive and laudable government action to protect indigenous sacred and cultural resources is the recent designation of the Bears Ears National Monument. Through its unprecedented model of co-management with local and regional tribes, the land use model adopted for the Bears Ears Monument allows for the continued use of the area for cultural practices for future generations while using indigenous communities' traditional knowledge to protect a unique cultural and ecological landscape for the use and enjoyment of the indigenous peoples concerned, as well as the public.

In fact, development on and near indigenous lands has disparate impacts on tribal communities as distinct from other communities. For example, in the Bakken Shale region, the tribes have significant concerns about the safety of those living on the reservations, especially women and children. Already Native women are 2.5 times more likely to be sexually assaulted in their lifetimes as compared to other women in the United States. And, when the oil boom began in the Bakken, the influx of oil and gas workers to the area coincided with a dramatic increase in violent crime and an incredible increase of human trafficking of Native women and children. Risk factors contributing to the sex trafficking of Native women include higher incidences of poverty, lower educational attainment levels, and historical trauma. As a direct result of outside development, the entrance of transient workers with no ties to the community, who can for the most part not be prosecuted for their criminal acts that occur on the reservation creates an unsafe and unstable environment for families on the reservation. Additionally, there is no mechanism in place to increase needed resources for the tribe to adequately protect their citizens through law enforcement or other services.

In reference to the increase of violence against women in the Bakken and near the Navajo Nation, tribes informed me that the oil and gas leasing approvals undertaken by the Bureau of Indian Affairs should but do not adequately consider the safety and welfare impacts on native women and children of extractive industry projects. Applicable United States regulations require that, at a minimum, the federal government consider safety, health and welfare impacts of these projects. Further, the United States acknowledges that it is committed to a trust responsibility for native peoples. This responsibility requires the United States to carefully review energy projects on, adjacent to, or outside of indigenous lands where there are potential impacts. In fact, Articles 21 and 22 of the Declaration explicitly task states with taking effective measures to ensure the continuing improvement of social and economic conditions of indigenous women and children, and to ensure that they have full protection and guarantees against all forms of violence and discrimination.

This problem exacerbates other important issues as well. Much of the testimony that I received referenced the historical trauma that deeply affects indigenous individuals every day. This trauma cumulated as a result of the largely discriminatory policies of the government towards Indian tribes and individuals since first contact and today still results in distrust of government initiatives and poor health outcomes for Indian individuals.

When resources are extracted from indigenous territories, the people living in those territories experience the attendant health impacts that result as evidenced in the 1940s when large uranium deposits were developed on the Navajo Nation's lands. Private companies developing uranium often employed Navajo workers and failed to communicate the known health risks of exposure to uranium. The workers, and the women and children living near the mines, continue to be burdened by high rates of lung disease and various cancers. Recently, the United States and the Navajo Nation entered into a historic settlement agreement to resolve latent claims remaining from the clean-up to restore healthy tribal communities on the Navajo Nation. To date, there are 15,000 abandoned uranium mines in the United States that need to go through the reclamation process, many of which impact indigenous lands.

Indigenous communities experience negative health impacts from extraction that occurs off the reservation as well. For instance, the Gold King mine disaster in Silverton, Colorado caused three million gallons of contaminated water to flow into the Animas River onto the Navajo Nation reservation, over one hundred miles away. Following the spill, levels of heavy metals in the water, including arsenic and cadmium, exceeded allowable state limits for domestic water. The contamination caused severe damage to crops and livestock, threatening the livelihood of Navajo farmers and ranchers. The long term health impacts of the spill remain unknown.

Importantly, the Gold King Mine had not been operational since it was abandoned in 1923. The disaster which occurred almost a century after the project closed demonstrates the possible long-term future impacts of natural resource extraction and attendant infrastructure on indigenous peoples.

The Gold King Mine spill and the Dakota Access Pipeline issue highlight the many water concerns associated with energy development. In places like the arid west, the substantial volumes of water used in drilling operations cause stress on surface water and groundwater supplies. Contamination of underground and surface waters is also a concern, with many projects threatening vital resources in water-scarce regions. In fact, a recent EPA study found scientific evidence that activities in the hydraulic fracturing water cycle can impact drinking water resources through spills, faulty well construction, discharges into surface waters, or disposal into underground injection wells. For indigenous peoples, water provides lifeways, subsistence, and has undeniable spiritual significance. In Lakota, they express this belief as *Mni Wiconi*: water is life.

In addition, another implication of energy development being borne by indigenous peoples has been a dramatic increase in the flaring of natural gas in North Dakota's Bakken formation. Because of the lack of sufficient natural gas pipeline infrastructure in the relatively new production area, many wells in the area have been forced to flare the natural gas product as a method of disposal.

The health implications of natural gas flaring are related to the exposure of hazardous air pollutants emitted during the combustion of the gas flare. The various pollutants, including methane, have been associated with a variety of adverse health impacts, including cancer, lung damage, and various other neurological defects. These effects are being felt by the residents of the Mandan, Hidatsa, and Arikara Nation, and in surrounding communities.

Indigenous communities in the United States want more control over their energy resources as a part of their overall desire to be self-determined with respect to their lands, territories, and resources. They are committed to balancing many different sets of concerns in their own approaches to energy development. The tribes rely on the income generated from natural resources to not only support critical government programs, but also to balance the protection of their lands, waters, and sacred places with the benefit of revenue and jobs.

I have been very impressed by the remarkable and unshakeable resolve tribes have to find creative ways to self-determine their development. For example, the Mandan, Hidatsa, and Arikara Nation recently formed Missouri River Resources, a wholly-owned tribal company dedicated to using best practices in the oil and gas industry to generate economic benefits for the tribal community through responsible oil development. Similarly, the Red Willow Production Company, a $2 billion company wholly owned and managed by the Southern Ute Tribe, has been generating revenue through oil and gas development on their reservation since 1992 and continues to maximize benefits for their tribal community while carefully managing their lands and resources.

Despite their successes, tribes continue to face significant challenges in harnessing their own development possibilities. In particular, the legal, regulatory, and tax structures currently in place serve to create additional hurdles while reducing the possibility of realizing important benefits. Of particular concern is the dual taxation regime that allows state governments to tax energy revenues derived from tribal lands without any requirement that those taxes are deployed to serve those tribal communities. Whether it is repaving destroyed roads, creating adequate environmental mitigation, providing emergency response plans, or bulking up the capacity of law enforcement, the energy-producing tribes find themselves alone in managing the impacts of development without adequate resources to do so.

The issues surrounding energy development underscore the need for reconciliation with indigenous peoples in the United States. Tribal leaders and representatives indicate that they are interested in engaging in a program of reconciliation to remedy the harms they have faced and improve the government-to-government relationship going forward. Such a program would acknowledge the historical wrongs inflicted upon indigenous peoples in the

United States and confront systemic barriers that prevent the full realization of indigenous peoples' rights.

Nevertheless, there are encouraging steps being taken by federal agencies to implement the Declaration in consultation policies. Since 2012, the federal government has made commendable efforts to develop policies toward more robust measures to effectively implement existing policies and to advance towards full recognition of the rights of indigenous peoples.

For example, the Advisory Council on Historic Preservation has issued guidance to federal agencies in carrying out their Section 106 responsibilities under the National Historic Preservation Act in line with the Declaration. These suggestions include developing a working knowledge of the Declaration and its articles, reviewing and updating agency policies to reflect the Declaration principles, and considering the Declaration to be a policy reference in the Section 106 process and beyond.

Further, in January 2017, the Department of the Interior, the Department of the Army, and the Department of Justice issued a report, "Improving Tribal Consultation and Tribal Involvement in Federal Infrastructure Decisions," following a series of regional consultations with tribal leaders to solicit recommendations on engaging tribes in infrastructure-related activities. The report provides an encouraging path forward that strongly upholds the government-to-government relationship between tribes and the federal government. The report also provides constructive strategies to increase communication, to maximize opportunities for good faith negotiations, and to ensure tribal input at every decision point. I am encouraged by the process of meaningful consultation with the tribes that the United States undertook in creating this report, and applaud the efforts made by the government to consider ways in which to improve consultation processes consistently across agencies, incorporating input from indigenous peoples. In order to meet the obligations of the Declaration, the United States should continue to build efforts to incorporate principles of meaningful consultation with the goal of obtaining free, prior, and informed consent from indigenous peoples as set forth in Articles 10, 11, 19, 28, 29, and 32.

As when my predecessor issued his 2012 report, significant work still needs to be done to implement policies and initiatives to further the rights of indigenous peoples. Unfortunately, the many recommendations of my predecessor in his 2012 report have yet to be realized.

In order to fully realize the rights of indigenous peoples as enshrined in the Declaration, I recommend that the United States government continue to improve upon its policies to develop stronger government-to-government relations with tribes. To do so, the government must, at a minimum, adhere to its own consultation policy as set forth in Executive Order 13175. The federal, state, and local governments should adopt consistent practices in consulting with tribes on projects that could affect indigenous rights. The federal government should take steps to consider fully and implement the suggestions from its own 2017 report, “Improving Tribal Consultation and Tribal Involvement in Federal Infrastructure Decisions.”

Tribes must continue to be supported to develop capacity and resources to realize self-determination to take advantage of their expanded authority in all areas including in energy development and law enforcement. I urge the government to continue to honour its treaty and trust obligations to indigenous peoples.

To ensure that native communities are not further plagued by violence, for measures that have the potential to create positive impacts on tribal communities, such as the 2013 reauthorization of the Violence Against Women Act, the United States must continue to take measures to ensure that tribal governments are able to implement them, including providing adequate resources.

The United States should take appropriate measures to ensure the United Nations Guiding Principles on Business and Human Rights are properly considered by all accountable actors in any projects that have impacts on indigenous peoples in the United States.

Finally, I recommend that for any extractive industry project affecting indigenous peoples, regardless of the status of the land, the United States should require a full environmental impact assessment of the project in consideration of the impact on indigenous peoples rights.

Notes

1. A/HRC/21/47/Add.1.

2. A/HRC/24/41.

THE CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM

CalPERS

GOVERNANCE & SUSTAINABILITY PRINCIPLES

California Public Employees' Retirement System
Lincoln Plaza - 400 Q Street - Sacramento, CA 95811

Updated: April 17, 2017

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I. INTRODUCTION

"Our mission is to provide responsible and efficient stewardship of the System to deliver promised retirement and health benefits, while promoting wellness and retirement security for members and beneficiaries."

The California Public Employees' Retirement System (CalPERS, System) is the nation's largest public pension fund with a duty to deliver the retirement and health benefits promised to our members. This responsibility applies not just to our current beneficiaries, but also to future members who may not retire for several decades. We therefore need to ensure that our commitments can be honored over the long-term.

A vital part of this is ensuring that our investments, which fund around two-thirds of our pension payments every year, generate the highest possible returns at an acceptable level of risk. This is a task managed by the CalPERS Investment Office, overseen by the CalPERS Board of Administration, and guided by our Investment Beliefs[1]and Core Values[2].

Over the years the CalPERS Principles have evolved from a guide to proxy voting in public markets, to a broader statement of our views on best practices guiding our engagement with companies, advocacy agenda with policy makers, and expectations for both our internal and external managers across the total fund.

As the governance and sustainability agenda has developed, so too have the CalPERS Principles. An important area of development has been integrating consideration of environmental and social factors alongside our governance agenda. We have given an economic framework to what is often called ESG in investing. As reflected in our Investment Beliefs, CalPERS considers that long-term value creation requires the effective management of three forms of capital – Financial, Physical, and Human[3]. This economic approach grounds our sustainable investment agenda in our fiduciary duty to generate risk-adjusted returns for our beneficiaries.

A further important area of development has been the recognition that financial markets' safety and soundness are vitally important to CalPERS ability to achieve its risk adjusted returns. Recognizing this – the program was renamed Governance and Sustainability in order to capture the various dimensions relevant to a long-term investor such as CalPERS. This focus on financial markets is also reflected in CalPERS' Investment Beliefs, which recognize that a long-term investment horizon is both an advantage and imposes a responsibility. That responsibility requires that CalPERS advocate for policies which support the long-term with policy makers, companies, and investment managers.

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[1] In October 2013, CalPERS adopted a set of ten Investment Beliefs intended to guide decision-making, facilitate the management of a complex portfolio, and enhance consistency. The Investment Beliefs can be found at www.calpers-governance.org

[2] Quality, Respect, Accountability, Integrity, Openness, and Balance.

[3] CalPERS discloses its progress of the System's efforts, sustainability work, and goals towards sustainable decision making in its publicly available report, *Towards Sustainable Investment & Operations*, which can be found at www.calpers-governance.org.

The current edition distills some 20 years of experience in governance and sustainability. We continue to develop our approach on new issues which are emerging and to refresh our thinking as we learn from experience.

CalPERS expects all internal and external managers of CalPERS capital to integrate the Principles into investment decision making, including proxy voting, consistent with fiduciary duty. CalPERS recognizes that countries and companies are in different developmental stages. We are mindful of differing laws and practices in jurisdictions – of governance outcomes and need to be carefully addressed. CalPERS' investment managers will need to exercise their best judgment after taking all relevant factors into account.

We have learned that company managers want to perform well, in both an absolute sense and as compared to their peers. They also want to adopt long-term strategies and vision, but often do not feel that their shareowners are patient enough. Our experience has shown all companies – whether governed under a structure of full accountability or not – will inevitably experience both ascents and descents along the path of profitability.

We have also learned, and firmly embrace the belief that strong, accountable corporate governance means the difference between long periods of failure in the depths of the performance cycle, and responding quickly to correct the corporate course.

This work has been integrated into CalPERS Investment Beliefs which address sustainable investment, risk management, and CalPERS engagement with companies, regulators, managers, and stakeholders.

We recognize that much of our experience in this area comes from investments in public equities but that our evolution to a "Total Fund" approach means these Principles may need to be suitably adapted to work across other asset classes. We continue to listen and learn in this area.

We encourage and welcome feedback on these Principles from companies, fellow investors and other stakeholders.

II. PURPOSE

These Principles have been adopted by the CalPERS Board, through its Investment Committee, in order to create the framework for considerations that must be taken into account when CalPERS:

- Executes its shareowner proxy voting responsibilities;
- Engages investee companies to achieve long-term sustainable risk-adjusted returns;
- Requests internal and external managers of CalPERS capital to make investment decisions on its behalf;
- Advocates with policy-makers and international organizations on financial market reform.

Proxy voting

CalPERS implements its proxy voting responsibility in a manner that is consistent with these Principles unless such action may result in long-term harm to the company that outweighs all reasonably likely long-term benefit; or unless such a vote is contrary to the interests of the beneficiaries of the System.

It is therefore important for shareowners such as CalPERS to exercise their rights to participate and make their voting decisions based on a full understanding of the information and legal documentation presented to them. CalPERS' proxy voting responsibilities cover a wide range of corporate governance issues centered around various management and shareowner proposals. Specific voting topics may include board quality, investor rights, compensation, corporate reporting, capital structure, environmental and social related issues. When exercising our voting rights, we will cast votes "for" or "against", individual management and shareowner proposals consistent with the interest of our beneficiaries and consistent with the Principles.

CalPERS will vote "against", an individual or slate of director nominees at companies that do not effectively oversee these interests. CalPERS will also withhold its vote in limited circumstances where a company has consistently demonstrated long-term economic underperformance.

As part of CalPERS' commitment to transparency, we publish our proxy voting activities at over 11,000 company annual general meetings.

Shareowner engagement

CalPERS has a long history of constructively engaging companies confidentially through in-person meetings, correspondence, and by telephone. In instances where companies fail to meet the standards of conduct defined by our Principles, CalPERS may file shareowner proposals to achieve governance reforms.

CalPERS prefers constructive engagement to divesting as a means of affecting the conduct of the entities in which we invest. This is because investors that divest lose their ability as shareowners to positively influence the company's strategy and governance.

Advocacy

CalPERS engages policy makers on regulatory and legislative reforms which support the Principles. CalPERS works through its federal representatives and also partners with organizations, both domestically and internationally, to further the System's goals.

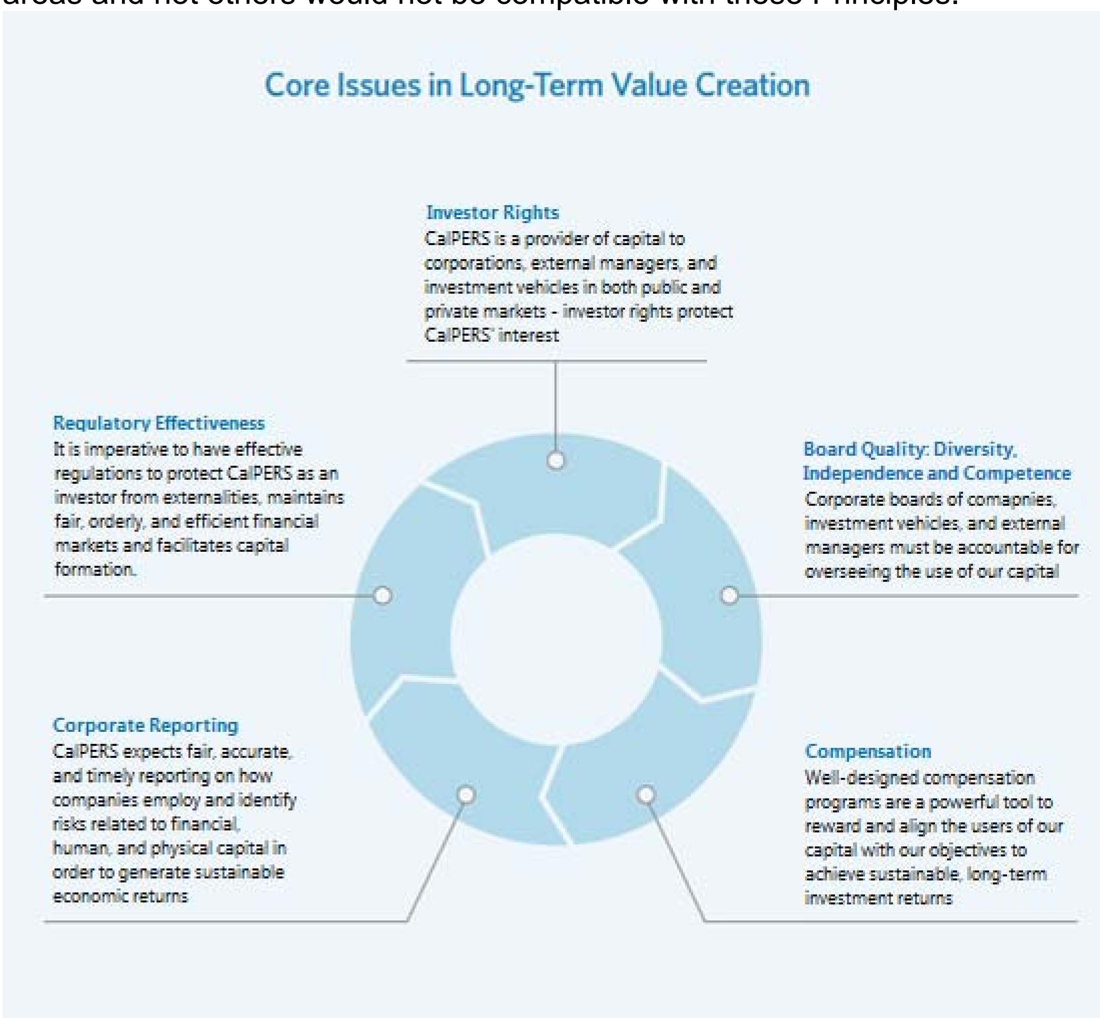
III. GOVERNANCE & SUSTAINABILITY PRINCIPLES

We believe that fully accountable governance structures produce, over the long term, the best returns to shareowners. So while we recognize that governance best practices are constantly evolving, we believe the following accountable governance structures provide the underlying tenets that should be adopted by all companies and markets – both developed and emerging – to establish the foundation for achieving long-term sustainable investment returns.

In particular we have identified five core issues that we believe have a long-term impact on risk and return:

A. Investors Rights
B. Board Quality: Diversity, Independence and Competence
C. Compensation
D. Corporate Reporting
E. Regulatory Effectiveness

As demonstrated in the diagram below, it is important to recognize that we believe that managing these five issues is mutually reinforcing. Approaches that only tackle some areas and not others would not be compatible with these Principles.



A. Investor Rights

CalPERS is a provider of capital to corporations, external managers, and investment vehicles in both public and private markets – investor rights protect CalPERS interests.

CalPERS recommends that corporations adopt the following shareowner rights:

1. **One-share/one-vote:** A shareowner's right to vote is inviolate and should not be abridged. All investors must be treated equitably and upon the principle of one-share/one-vote.

   a. **Redress:** Minority shareowners should be protected from abusive actions by, or in the interest of, controlling shareowners acting either directly or indirectly, and should have effective means of redress. Proper remedies and procedural rules should be put in place to make the protection effective and affordable. Where national legal remedies are not afforded the board is encouraged to ensure that sufficient shareowner protections are provided in the company's bylaws.

2. **Access to Director Nominations:** Shareowners should have effective access to the director nomination process. Companies should provide access to management proxy materials for a long-term investor or group of long-term investors owning in aggregate at least three percent of a company's voting stock, to nominate up to 25 percent of the board. Eligible investors must have owned the stock for at least three years. Company proxy materials and related mailings should provide equal space and equal treatment of nominations by qualifying investors.

   To allow for informed voting decisions, it is essential that investors have full and accurate information about access mechanism users and their director nominees. Therefore, shareowners nominating director candidates under an access mechanism should adhere to the same SEC rules governing disclosure requirements and prohibitions on false and misleading statements that currently apply to proxy contests for board seats.

3. **Shareowner Approval Rights:** The board should ensure that shareowners have the right to vote on major decisions which may change the nature of the company in which they have invested. Such rights should be clearly described in the company's governing documents and include:

   a. **Sale or Pledge of Corporate Assets**: Major corporate decisions concerning the sale or pledge of corporate assets that would have a material effect on shareowner value. Such a transaction will automatically be deemed to have a material effect if the value of the assets exceeds 10 percent of the assets of the company and its subsidiaries on a consolidated basis.
   b. **Mergers and Acquisitions**: Material and extraordinary transactions such as mergers and acquisitions.
   c. **Debt Issuance**: Issuing debt to a degree that would excessively leverage the company and imperil its long-term viability.

d. **Share Repurchases (buy-backs)**: The corporation's acquisition of five percent or more of its common shares at above-market prices other than by tender offer to all shareowners.
e. **Issuance of New Shares**: The board should be mindful of dilution of existing shareowners and provide full explanations where pre-emption rights are not offered.
f. **Poison Pill Approval:** No board should enact nor amend a poison pill (shareowner rights plan) except with shareowner approval or other structures that act as anti-takeover mechanisms. Only non-conflicted shareowners should be entitled to vote on such plans and the vote should be binding. Plans should be time limited and put periodically to shareowners for re-approval.
    i. **Continuing Directors**: Corporations should not adopt so-called “continuing director” provisions (also known as “dead-hand” or “no-hand” provisions, which are most commonly seen in connection with a potential change in control of the company) that allow board actions to be taken only by: (1) those continuing directors who were also in office when a specified event took place or (2) a combination of continuing directors plus new directors who are approved by such continuing directors.
g. **Significant Related Party Transaction**: Shareowners should have the right to approve significant related party transactions and this should be based on the approval of a majority of disinterested shareowners. The board should submit the transaction for shareowner approval and disclose (both before concluding the transaction and in the company’s annual report):
    i. the identity of the ultimate beneficiaries including, any controlling owner and any party affiliated with the controlling owner with any direct / indirect ownership interest in the company;
    ii. other businesses in which the controlling shareowner has a significant interest; and
    iii. Shareowner agreements (e.g. commitments to related party payments such as license fees, service agreements and loans).

    The board should disclose the process for reviewing and monitoring related party transactions which, for significant transactions, includes establishing a committee of independent directors. This can be a separate committee or an existing committee comprised of independent directors, for example the Audit Committee. The committee should review significant related party transactions to determine whether they are in the best interests of the company and, if so, to determine what terms are fair and reasonable. The conclusion of committee deliberations on significant related party transactions should be disclosed in the company’s annual report to shareowners.

4. **Majority Vote Requirements:** Shareowner voting rights should not be subject to supermajority voting requirements. A majority of proxies cast should be able to:

    a. **Bylaw and Charter Amendments**: Amend the company’s governing documents such as the Bylaws and Charter by shareowner resolution.
    b. **Director Removal**: Remove a director with or without cause.

c. **Director Elections:** In an uncontested director election, a majority of proxies cast should be required to elect a director. In a contested election, a plurality of proxies cast should be required to elect a director. Resignation for any director that receives a withhold vote greater than 50 percent of the votes cast should be required. Unless the incumbent director receiving less than a majority of the votes cast has earlier resigned, the term of the incumbent director should not exceed 90 days after the date on which the voting results are determined.

d. **Auditor Ratification by Shareowners:** The selection of the independent external auditor should be ratified by shareowners annually.

5. **Corporate Proxy and Voting Mechanisms**: The board should promote efficient and accessible voting mechanisms that allow shareowners to participate in general meetings either in person or remotely, preferably by electronic means or by post, and should not impose unnecessary hurdles.

    a. **Universal Proxy**: To facilitate the shareowner voting process in contested elections – opposing sides engaged in the contest should utilize a proxy card naming all management nominees and all dissident nominees, providing every nominee equal prominence on the proxy card.
    b. **Sponsoring and Implementation of Shareowner Resolutions:** Shareowners should have the right to sponsor resolutions. A shareowner resolution that is approved by a majority of proxies cast should be implemented by the board.
    c. **Proxy Confidentiality:** Proxies should be kept confidential from the company, except at the express request of shareowners.
    d. **Cumulative Voting Rights:** Shareowners should have the right to cumulate votes in a contested election of directors. Such a right gives shareowners the ability to aggregate their votes for directors and either cast all of those votes for one candidate or distribute those votes for any number of candidates
    e. **Shareholder Identification:** The board should ensure that the company maintains a record of the registered owners of its shares or those holding voting rights over its shares. Registered shareowners, or their agents, should provide the company (where anonymity rules do not preclude this) with the identity of beneficial owners or holders of voting rights when requested in a timely manner. Shareowners should be able to review this record of registered owners of shares or those holding voting rights over shares.
    f. **Bundled Voting**: Shareowners should be allowed to vote on unrelated issues separately. Individual voting issues (particularly those amending a company's charter), bylaws or anti-takeover provisions should not be bundled.
    g. **Broker Votes**: Uninstructed broker votes and abstentions should be counted only for purposes of a quorum.
    h. **Advance Notice, Holding Requirements and Other Provisions**: Advance notice bylaws, holding requirements, disclosure rules, and any other company imposed regulations on the ability of shareowners to solicit proxies beyond those required by law should not be so onerous as to deny sufficient time, limit the pool of eligible candidates, or otherwise make it impractical for shareowners to submit nominations or proposals and distribute supporting proxy materials.

6. **Special Meetings and Written Consent:** Shareowners should be able to call special meetings or act by written consent.

7. **Judicial Forum:** Companies should not attempt to restrict the venue for shareowner claims by adopting charter or bylaw provisions that seek to establish an exclusive forum. Nor should companies attempt to bar shareowners from the courts through the introduction of forced arbitration clauses.

B. Board Quality: Diversity, Independence and Competence

Corporate boards of companies, investment vehicles and external managers must be accountable for overseeing the use of our capital.

1. **Director Accountability:** As a fiduciary, a director owes a duty of loyalty to the corporation and its shareowners and must exercise reasonable care in relation to his or her duties as a director. Directors should be accountable to shareowners, and management accountable to directors.

   a. **Long-term Vision:** Corporate directors and management should have a long-term strategic vision that, at its core, emphasizes sustained shareowner value and effective management of both risk and opportunities in the oversight of financial, physical, and human capital. In turn, despite differing investment strategies and tactics, shareowners should encourage corporate management to resist short-term behavior by supporting and rewarding long-term superior returns.
   b. **Accessibility to Shareowner Inquiry:** To ensure this accountability, directors must be accessible to shareowner inquiry concerning their key decisions affecting the company's strategic direction.
   c. **Annual Director Elections:** Every director should be elected annually. Accountability mechanisms may require directors to stand for election on an annual basis or to stand for election at least once every three years.
   d. **Board Size:** The board periodically reviews its own size, and determines the size that is most effective toward future operations.
   e. **Director Attendance:** Absent compelling and stated reasons, directors should be expected to attend at least 75 percent of the board and key committee meetings on which they sit.
   f. **Director Time Commitment:** The board adopts and discloses guidelines in the company's proxy statement to address competing time commitments that are faced when directors, especially acting CEOs, serve on multiple boards.

2. **Informed Directors**: Directors should receive training from independent sources on their fiduciary responsibilities and liabilities. Directors have an affirmative obligation to become and remain independently familiar with company operations; they should not rely exclusively on information provided to them by the CEO to do their jobs. Directors should be provided meaningful information in a timely manner prior to board meetings and should be allowed reasonable access to management to discuss board issues.

a. **Board Access to Management:** The board should have a process in place by which all directors can have access to senior management.
b. **New Director Induction:** The board should have in place a formal process of induction for all new directors so that they are well-informed about the company as soon as possible after their appointment. Directors should also be enabled to regularly refresh their skills and knowledge to discharge their responsibilities.

3. **Board Independence:** Independence is the cornerstone of accountability. It is now widely recognized that independent boards are essential to a sound governance structure. Nearly all corporate governance commentators agree that boards should be comprised of at least a majority of "independent directors." But the definitional independence of a majority of the board may not be enough in some instances. The leadership of the board must embrace independence, and it must ultimately change the way in which directors interact with management. Independence also requires a lack of conflict between the director's personal, financial, or professional interests, and the interests of shareowners.

   a. **Majority of Independent Directors:** At a minimum, a majority of the board consists of directors who are independent. Boards should strive to obtain board composition made up of a substantial majority of independent directors.
   b. **Independent Executive Session:** Independent directors should meet periodically (at least once a year) alone in an executive session, without the CEO. The independent board chair or lead (or presiding) independent director should preside over this meeting.
   c. **Board Role of Retiring CEO:** Generally, a company's retiring CEO should not continue to serve as a director on the board and at the very least be prohibited from sitting on any of the board committees.

4. **Board Committee Independence:** The full board is responsible for the oversight function on behalf of shareowners. Should the board decide to have other committees (e.g. an executive committee) in addition to those required by law, the duties and membership of such committees should be fully disclosed. Committees who perform the audit, director nomination and executive compensation functions should consist entirely of independent directors. The board (not the CEO) should appoint the committee chairs and members. Committees should be able to select their own service providers. Some regularly scheduled committee meetings should be held with only the committee members (and, if appropriate, the committee's independent consultants) present. The process by which committee members and chairs are selected should be disclosed to shareowners.

5. **Board Chairperson Independence and Leadership:** The board should be chaired by an independent director. The chair is responsible for leadership of the board and ensuring its effectiveness. The chair should ensure a culture of openness and constructive debate that allows a range of views to be expressed. The CEO and chair roles should only be combined in very limited circumstances; in these situations, the board should provide a written statement in the proxy materials discussing why the combined role is in the best interest of shareowners, and it should name a lead independent director to fulfill the following duties:

a. Coordinate the scheduling of board meetings and preparation of agenda material for board meetings and executive sessions of the board's independent or non-management directors.
b. Lead board meetings in addition to executive sessions of the board's independent or non-management directors.
c. When selecting a new CEO, boards should re-examine the traditional combination of the "chief executive" and "chair" positions.
d. Define the scope, quality, quantity and timeliness of the flow of information between company management and the board that is necessary for the board to effectively and responsibly perform their duties.
e. Oversee the process of hiring, firing, evaluating, and compensating the CEO.
f. Approve the retention of consultants who report directly to the board.
g. Advise the independent board committee chairs in fulfilling their designated roles and responsibilities to the board.
h. Interview, along with the chair of the nominating committee, all board candidates, and make recommendations to the nominating committee and the board.
i. Assist the board and company officers in assuring compliance with and implementation of the company's Governance Principles.
j. Act as principal liaison between the independent directors and the CEO on sensitive issues.
k. Coordinate performance evaluations of the CEO, the board, and individual directors.
l. Recommend to the full board the membership of the various board committees, as well as selection of the committee chairs.
m. Be available for communication with shareowners.

6. **Director Independence**: The board should ensure that policies and procedures on conflicts of interest are established, understood and implemented by directors, management, employees and other relevant parties. If a director has an interest in a matter under consideration by the board, then the director should promptly declare such an interest and be precluded from voting on the subject or exerting influence. Each company should disclose in its annual proxy statement the definition of "independence" relied upon by its board. The board's definition of "independence" should address, at a minimum, a director who:

a. Is not currently, or within the last five years has not been, employed by the Company in an executive capacity.
b. Has not received more than $50,000 in direct compensation from the Company during any 12-month period in the last three years other than:
   i. Director and committee fees including bona fide expense reimbursements.
   ii. Payments arising solely from investments in the company's securities.
c. Is not affiliated with a company that is an adviser or consultant to the Company or a member of the Company's senior management during any 12-month period in the last three years that has received more than $50,000 from the Company.
d. Is not a current employee of a company (customer or supplier) that has made payments to, or received payments from the Company that exceed the greater of $200,000 or 2 percent of such other company's consolidated gross revenues.
e. Is not affiliated with a not-for-profit entity (including charitable organizations) that receives contributions from the Company that exceed the greater of $200,000 or 2 percent of consolidated gross revenues of the recipient for that year.

- **f.** Is not part of an interlocking directorate in which the CEO or other employee of the Company serves on the board of another company employing the director.
- **g.** Has not had any of the relationships described above with any parent or subsidiary of the Company.
- **h.** Is not a member of the immediate family of any person described in 6a-h.

7. Board Responsibilities: The board responsibilities should include:

- **a. CEO Performance:** Independent directors establish CEO performance criteria focused on optimizing operating performance, profitability and shareowner value creation; and regularly review the CEO's performance against those criteria.
- **b. Corporate Strategy:** Review, approve and guide corporate strategy, capital discipline and allocation, major plans of action, risk policies, and business plans.
  - **i. Capital Allocation Discipline**: Boards should provide shareowners with robust oversight and disclosure surrounding capital allocation decisions, including optimizing the capital structure to ensure discipline in prioritizing the most productive use of capital over the long-term. We recommend the following:
    - **a) Policy**: The board should develop and disclose its policy on capital allocation that outlines the application of discretionary cash flows for organic growth projects, investments, strategic mergers and acquisitions, cash and scrip dividends, debt repayment, and share repurchases. The board should also communicate its philosophy on the use of debt leverage.
    - **b) Board Monitoring and Assessment**: The board should monitor capital allocation decisions and the range of capital allocation alternatives and their corresponding risks.
    - **c) Disclosure**: The board should disclose in regulatory filings:
      - i. The board's role in overseeing capital allocation decisions and how each decision aligns with the company's strategic priorities for investment to ensure long-term value creation;
      - ii. The controls and metrics in place to monitor capital allocation decisions;
      - iii. The impact on performance targets in executive compensation plans; and
      - iv. The board's measures to address potential conflicts of interest with incentives impacted by capital allocation decisions, such as share buybacks.

- **c. Corporate Performance:** Set performance objectives, monitor implementation and corporate performance, and oversee major capital expenditures, and acquisitions/divestitures.

d. **Corporate Annual Report and Accounts**: Affirm that the company's annual report and accounts present a true and fair view of the company's position and prospects. As appropriate, taking into account statutory and regulatory obligations in each jurisdiction, the information provided in the annual report and accounts should:
   i. be relevant to investment decisions, enabling shareowners to evaluate risks, past and present performance, and to draw inferences regarding future performance;
   ii. enable shareowners, who put up the risk capital, to fulfill their responsibilities as owners to assess company management and the strategies adopted;
   iii. be a faithful representation of the events it purports to represent;
   iv. generally be neutral and report activity in a fair and unbiased way except where there is uncertainty. Prudence should prevail such that assets and income are not overstated and liabilities and expenses are not understated. There should be substance over form. Any off-balance sheet items should be appropriately disclosed;
   v. be verifiable so that when a systematic approach and methodology is used the same conclusion is reached;
   vi. be presented in a way that enables comparisons to be drawn of both the entity's performance over time and against other entities; and
   vii. recognize the 'matching principle', which requires that expenses are matched with revenues.
   viii. recognize the establishment and maintenance of an effective system of internal control which should be measured against internationally accepted standards of internal audit and tested periodically for its adequacy. Where an internal audit function has not been established, full reasons for this should be disclosed in the annual report, as well as an explanation of how adequate assurance of the effectiveness of the system of internal controls has been obtained.

e. **Reincorporation:** When considering reincorporation, corporations should analyze shareowner protections, company economic, capital market, macro-economic, and corporate governance considerations. Companies should not reincorporate to offshore locations where corporate governance structures are weaker, which reduces management accountability to shareowners.

f. **Charitable and Political Contributions:** Robust board oversight and disclosure of corporate charitable and political activity is needed to ensure alignment with business strategy and to protect assets on behalf of shareowners. We recommend the following:
   i. **Policy:** The board should develop and disclose a policy that outlines the board's role in overseeing corporate charitable and political contributions, the terms and conditions under which charitable and political contributions are permissible, and the process for disclosing charitable and political contributions annually.
   ii. **Board Monitoring, Assessment and Approval:** The board of directors should monitor charitable and political contributions (including trade association contributions directed for lobbying purposes) made by the company. The board should ensure that only contributions consistent with and aligned to the interests of the company and its shareowners are

approved.

iii. **Disclosure:** The board should disclose on an annual basis the amounts and recipients of monetary and non-monetary contributions made by the company during the prior fiscal year. If any expenditure earmarked or used for political or charitable activities were provided to or through a third-party to influence elections of candidates or ballot measures or governmental action, then those expenditures should be included in the report.

8. **Board, Committee, and Director Evaluation**: No board can truly perform its function of overseeing a company's strategic direction and monitoring management's success without a system of evaluating itself. The board should establish preparation, participation and performance expectations for itself (acting as a collective body), for the key committees and each of the individual directors. A process by which these established board, key committee and individual director expectations are evaluated on an annual basis should be disclosed to shareowners. Directors must satisfactorily perform based on the established expectations with re-nomination based on any other basis being neither expected nor guaranteed.

9. **Board Talent Assessment and Diversity:** The board should facilitate a process that ensures a thorough understanding of the diverse characteristics necessary to effectively oversee management's execution of a long-term business strategy. Board diversity should be thought of in terms of skill sets, gender, age, nationality, race, sexual orientation, gender identity, and historically under-represented groups. Consideration should go beyond the traditional notion of diversity to include a more broad range of experience, thoughts, perspectives, and competencies to help enable effective board leadership. A robust process for how diversity is considered when assessing board talent and diversity should be adequately disclosed and entail:

   a. **Director Talent Evaluation**: To focus on the evolving global capital markets, a board should disclose its process for evaluating the diverse talent and skills needed on the board and its key committees.
   b. **Director Attributes**: Board attributes should include a range of skills and experience which provide a diverse and dynamic team to oversee business strategy, risk mitigation and senior management performance. The board should establish and disclose a diverse mix of director attributes, experiences, perspectives and skill sets that are most appropriate for the company. At a minimum, director attributes should include expertise in accounting or finance, international markets, business, human capital management, industry knowledge, governance, customer-base experience or perspective, crisis response, leadership, strategic planning, and competence managing multifaceted risk – including expertise and experience in climate change risk management strategies. Additionally, existing directors should receive continuing education surrounding a company's activities and operations to ensure they maintain the necessary skill sets and knowledge to meet their fiduciary responsibilities.
   c. **Director Nominations**: With each qualified director nomination recommendation, the board should consider the issue of competence,

independence, continuing director tenure, as well as board diversity, and take steps as necessary to ensure that the board maintains openness to new ideas, a willingness to re-examine the status quo, and able to exercise judgment in the best interests of the corporation free of any external influence that may attempt to be or may appear to be exerted upon them.

d. **Director Tenure**: Boards should consider all relevant facts and circumstances to determine whether a director should be considered independent – these considerations include the director's years of service on the board – extended periods of service may adversely impact a director's ability to bring an objective perspective to the boardroom. We believe director independence can be compromised at 12 years of service – in these situations a company should carry out rigorous evaluations to either classify the director as non-independent or provide a detailed annual explanation of why the director can continue to be classified as independent. Additionally, there should be routine discussions as part of a rigorous evaluation and succession planning process surrounding director refreshment to ensure boards maintain the necessary mix of skills, diversity, and experience to meet strategic objectives.

10. **Role of the Audit Committee:** At least one member of the Audit Committee should have recent and relevant financial experience. The main role and responsibilities of the Audit Committee should be described in the committee's terms of reference. This includes:

a. **Auditor Liability:** To strengthen the auditor's objective and unbiased audit of financial reporting, audit committees should ensure that contracts with the auditor do not contain specific limits to the auditor's liability to the company for consequential damages or require the corporation to use alternative dispute resolution.

b. **Auditor Selection:** Audit committees should promote expanding the pool of auditors considered for the annual audit to help improve market competition and thereby minimize the concentration of only a small number of audit firms from which to engage for audit services. To allow audit committees a robust foundation to determine audit firm independence, auditors should provide three prior years of activities, relationships, and services (including tax services) with the company, affiliates of the company and persons in financial reporting oversight roles that may impact the independence of the audit firm.

c. **Auditor Rotation:** Audit committees should promote rotation of the auditor to ensure a fresh perspective and review of the financial reporting framework.

d. **Audit Committee Communication with Auditor:** The auditor should articulate to the Audit Committee, risks and other matters arising from the audit that are significant to the oversight of the financial reporting process, including situations where the auditor is aware of disputes or concerns raised regarding accounting or auditing matters. The Audit Committee should consider providing to investors a summary document of its discussions with auditors to enhance investor confidence in the audit process.

e. **Monitoring the integrity of the accounts**: And any formal announcements relating to the company's financial performance, and reviewing significant financial reporting judgments contained in them.

f. **Oversight of key accounting policies and accounting judgments**: Which should be in accordance with generally accepted international accounting standards, and disclosing such policies in the notes to the company's accounts.
g. **Audit Scope**: Agreeing to the minimum scope of the audit as prescribed by applicable law and any further assurance that the company needs. Shareowners (who satisfy a reasonable threshold shareholding) should have the opportunity to expand the scope of the forthcoming audit or discuss the results of the completed audit should they wish to.
h. **Auditor Independence:** Assuring itself of the quality of the audit carried out by the external auditors and assessing the effectiveness and independence of the auditor each year. This includes overseeing the appointment, reappointment and, if necessary, the removal of the external auditor and the remuneration of the auditor. There should be transparency in advance when the audit is to be tendered so that shareowners can engage with the company in relation to the process should they so wish.
i. **Auditor Dialogue**: Having appropriate dialogue with the external auditor without management present and overseeing the interaction between management and the external auditor, including reviewing the management letter provided by the external auditors and overseeing management's response; and reporting on its work and conclusions in the annual report.
j. **Assertion of Internal Financial Controls:** The Audit Committee should require the auditor's opinion to include commentary on any management assertion that the system of internal financial controls is operating effectively and efficiently, that assets are safeguarded, and that financial information is reliable as of a specific date, based on a specific integrated framework of internal controls.
k. **Audit Committee Expertise:** Audit Committee financial expertise at a minimum should include skill-sets as outlined by Section 407(d)(5)(i) of Regulation S-K and the Exchange listing requirements. Boards should consider the effectiveness of the Audit Committee and designated financial expert(s) in its annual assessment. Firms may be able to reduce their cost of capital as related to the quality of its financial reporting. The quality of financial reporting can be increased by appropriately structuring the Audit Committee with effective financial expertise.
l. **Annual Reporting:** Disclosing in the annual reporting the following:
    i. Assessment of the independence and objectivity of the external auditor to assure the auditors and their staff have no financial, business, employment or family and other personal relationships with the company;
    ii. Assessment of the appropriateness of total fees charged by the auditors;
    iii. Assessment of non-audit services and fees charged including limitations or restrictions tied to the provision of non-audit services;
    iv. Explanation of why non-audit services were provided by the auditor rather than by another party and how the auditor's independence has been safeguarded;
    v. Rational for recommending the appointment, reappointment or removal of the external auditor, including information on tendering frequency,

tenure, and any contractual obligations that acted to restrict the choice of external auditors;
vi. Auditor rotation period;
vii. Assessment of issues which resulted in an auditor resignation;
viii. Assessment of all relationships between the registered public accounting firm or any affiliates of the firm and the potential audit clients or persons in a financial reporting oversight role that may have a bearing on independence.

11. **Role of the Nomination Committee**: The main role and responsibilities of the nomination committee should be described in the committee's terms of reference. This includes:

    a. **Skills Matrix**: Developing a skills matrix, by preparing a description of the desired roles, experience and capabilities required for each appointment, and then evaluating the composition of the board.
    b. **Board Appointments**: Leading the process for board appointments and putting forward recommendations to shareowners on directors to be elected and re-elected.
    c. **Director Conflicts of Interest**: Upholding the principle of director independence by addressing conflicts of interest (and potential conflicts of interest) among committee members and between the committee and its advisors during the nomination process.
    d. **Independent Consultants**: Considering and being responsible for the appointment of independent consultants for recruitment or evaluation including their selection and terms of engagement and publically disclosing their identity and consulting fees.
    e. **Shareowner Dialogue**: Entering into dialogue with shareowners on the subject of board nominations either directly or via the board; and
    f. **Board Succession Planning**.

12. **Role of the Compensation Committee**: The main role and responsibilities of the compensation committee should be described in the committee terms of reference. This includes:

    a. **Compensation Philosophy**: Determining and recommending to the board the remuneration philosophy and policy of the company.
    b. **Oversight of Plan Design, Implementation, Monitoring and Evaluation**: Short-term and long-term share-based incentives and other benefits schemes including pension arrangements, for all executive officers.
    c. **Director Conflicts of Interest**: Ensuring that conflicts of interest among committee members and between the committee and its advisors are avoided.
    d. **Independent Consultants**: Appointing any independent remuneration consultant including their selection and terms of engagement and disclosing their identity and consulting fees; and
    e. **Shareowner Dialogue**: Maintaining appropriate communication with shareowners on the subject of remuneration, either directly or via the board.

13. **Risk Oversight:** In response to the turmoil in the financial markets and economic uncertainties, CalPERS has elevated the importance of risk oversight and management. The primary goal is to ensure companies adopt policies, operating procedures, internal controls, federal and state law compliance programs, reporting, and decision-making protocols to effectively manage, evaluate, and mitigate risk. The ultimate outcome is to ensure that companies function as "risk intelligent" organizations. CalPERS recommends the following:

    a. The board is ultimately responsible for a company's risk management philosophy, organizational risk framework and oversight. The board should be comprised of skilled directors with a balance of broad business experience and extensive industry expertise to understand and question the breadth of risks faced by the company. Risk management should be considered a priority and sufficient time should be devoted to oversight.
    b. The company should promote a risk-focused culture and a common risk management framework should be used across the entire organization. Frequent and meaningful communication should be considered the "cornerstone" for an effective risk framework. A robust risk framework will facilitate communication across business units, up the command chain and to the board. The company's culture with regard to risk and the process by which issues are escalated and de-escalated within the company should be evaluated at intervals as appropriate to the situation.
    c. The board should set out specific risk tolerances and implement a dynamic process that continuously evaluates and prioritizes risks. An effective risk oversight process considers both internal company related risks such as operational, financial, credit, solvency, liquidity, corporate governance, cyber-security, environmental, reputational, social, and external risks such as industry related, systemic, and macro-economic.
    d. Compensation practices should be evaluated to ensure alignment with the company's risk tolerances and that compensation structures do not encourage excessive risk taking.
    e. At least annually, the board should approve a documented risk management plan and disclose sufficient information to enable shareowners to assess whether the board is carrying out its risk oversight responsibilities. Disclosure should also include the role of external parties such as third-party consultants in the risk management process. While ultimate responsibility for a company's risk management approach rests with the full board, having a risk committee (be it a stand-alone risk committee, a combined risk committee with nomination and governance, strategy, audit or other) can be an effective mechanism to bring the transparency, focus and independent judgment needed to oversee the company's risk management approach.
    f. While the board is ultimately responsible for risk oversight, executive management should be charged with designing, implementing and maintaining an effective risk program. Roles and reporting lines related to risk management should be clearly defined. At a minimum, the roles and reporting lines should be explicitly set out for the board, board risk committees, Chief Executive Officer, Chief Financial Officer, the Chief Risk Officer, and business unit heads. The board and risk related committees should have appropriate

transparency and visibility into the organization's risk management practices to carry out their responsibilities.

14. **CEO Succession Plan:** The board should proactively lead and be accountable for the development, implementation, and continual review of a CEO succession plan. Board members should be required to have a thorough understanding of the characteristics necessary for a CEO to execute on a long-term strategy that optimizes operating performance, profitability and shareowner value creation. At a minimum, the CEO succession planning process should:

    a. Become a routine topic of discussion by the board.
    b. Extend down throughout the company emphasizing the development of internal CEO candidates and senior managers while remaining open to external recruitment.
    c. Require all board members be given exposure to internal candidates.
    d. Encompass both a long-term perspective to address expected CEO transition periods and a short-term perspective to address crisis management in the event of death, disability or untimely departure of the CEO.
    e. Provide for open and ongoing dialogue between the CEO and board while incorporating an opportunity for the board to discuss CEO succession planning without the CEO present.
    f. Be disclosed to shareowners on an annual basis and in a manner that would not jeopardize the implementation of an effective and timely CEO succession plan.

15. **Director Succession Plan:** The board should proactively lead and be accountable for the development, implementation, and continual review of a director succession plan. Board members should be required to have a thorough understanding of the characteristics necessary to effectively oversee management's execution of a long- term strategy that optimizes operating performance, profitability, and shareowner value creation. At a minimum, the director succession planning process should:

    a. Become a routine topic of discussion by the board.
    b. Encompass how expected future board retirements or the occurrence of unexpected director turnover as a result of death, disability or untimely departure is addressed in a timely manner.
    c. Encompass how director turnover either through transitioning off the board or as a result of rotating committee assignments and leadership is addressed in a timely manner.
    d. Provide for a mechanism to solicit shareowner input.
    e. Be disclosed to shareowners on an annual basis and in a manner that would not jeopardize the implementation of an effective and timely director succession plan.

16. **Human Capital Management Practices**: Corporations should adopt maximum progressive practices toward the elimination of human rights violations in all countries or environments in which the company operates.

Additionally, these practices should emphasize and focus on preventing discrimination and/or violence based on race, color, religion, national origin, age, disability, sexual orientation, gender identity, marital status, or any other status protected by laws or regulations in areas of a company's operation. Boards should be accountable for companies to develop and implement company policies, procedures, training and internal reporting structures to ensure commitment to:

a. **Universal Human Rights**: Express our support for universal human rights and, particularly, those of our employees, the communities within which we operate, and parties with whom we do business.
b. **Equal Employment Opportunity**: Promote equal opportunity for our employees at all levels of the company with respect to issues such as color, race, gender, age, ethnicity or religious beliefs, and operate without unacceptable worker treatment such as the exploitation of children, physical punishment, female abuse, involuntary servitude, or other forms of abuse.
c. **Freedom of Association**: Respect our employees' voluntary freedom of association.
d. **Eliminate all Forms of Forced and Compulsory Labor**: Compensate our employees to enable them to meet at least their basic needs and provide the opportunity to improve their skill and capability in order to raise their social and economic opportunities.
e. **Provide a safe and healthy workplace:** Protect human health and the environment; and promote sustainable development.
f. **Promote fair competition**: Including respect for intellectual and other property rights, and not offer, pay or accept bribes.
g. **Strategic Social Investment**: Work with governments and communities in which we do business to improve the quality of life in those communities – including their educational, cultural, economic and social well-being – and seek to provide training and opportunities for workers from disadvantaged backgrounds.
h. **Application to Supply Chain**: Promote the application of these principles by those with whom we do business.

C. Compensation

Well-designed compensation programs are a powerful and effective tool to reward and align the users of our capital with our objectives to achieve sustainable, long-term investment returns.

Implicit in CalPERS' Principles related to compensation, is the belief that the philosophy and practice of compensation needs to be performance-based. We also advocate improved disclosure, and enhanced compensation committee accountability for compensation.

We believe that shareowners should have an effective mechanism to stimulate healthy debate for the purpose of holding management accountable for performance through compensation programs; however we do not generally believe that it is optimal for shareowners to approve individual contracts at the company level.

CalPERS recommends the following:

1. **Total Compensation – Structure and Components**

   a. **Board Designed, Implemented, and Disclosed to Shareowners:** To ensure the alignment of interest with long-term shareowners, compensation programs are to be designed, implemented, and disclosed to shareowners in the annual proxy statement by the board, through an independent compensation committee. Compensation programs should not restrict the company's ability to attract and retain competent executives.
   b. **Mix of Cash and Equity:** Compensation should be comprised of a combination of cash and equity based compensation.
   c. **Quantum**: Compensation should be reasonable and equitable and the quantum should be determined within the context of the company as a whole. Compensation committees should set appropriate limits on the size of long-term incentive awards granted to executives. So-called "mega-awards" or outsized awards should be avoided, except in extraordinary circumstances, because they can be disproportionate to performance.
   d. **Shareowner Advisory Vote on Executive Compensation:** Companies should submit executive compensation policies to shareowners for non-binding approval on an annual basis.
   e. **Targeting Total Compensation Components:** Overall target ranges of total compensation and components therein including base salary, short-term incentive and long-term incentive components should be disclosed. When setting performance goals for "target" bonuses, the compensation committee should set performance levels below which no bonuses would be paid and above which bonuses would be capped. Except in extraordinary situations, the compensation committee should not "lower the bar" by changing performance targets in the middle of bonus cycles. If the committee decides that changes in performance targets are warranted in the middle of a performance cycle, it should disclose the reasons for the change and details of the initial targets and adjusted targets.
   f. **Peer Relative Analysis:** Disclosure should include how much of total compensation is based on peer relative analysis and how much is based on other criteria. There should be annual disclosure of the companies in peer groups used for benchmarking and/or other comparisons. If the peer group used for compensation purposes differs from that used to compare overall performance, such as the five-year stock return graph required in the annual proxy materials, the compensation committee should describe the differences between the groups and the rationale for choosing between them. In addition to disclosing names of companies used for benchmarking and comparisons, the compensation committee should disclose targets for each compensation element relative to the peer/benchmarking group and year-to-year changes in companies composing peer/benchmark groups.
   g. **Pay for Performance**: Compensation of the executive oversight group should be driven predominantly by performance. The compensation

committee should establish performance measures for compensation that are agreed to ahead of time and publicly disclosed.

h. **Alignment with Business Strategy:** Compensation committees should have a well-articulated philosophy that links compensation to long-term business strategy.
i. **Sustainability Objectives and Compensation:** Compensation plans should be designed to support sustainability performance objectives particularly with regard to risk management, environmental, health, and safety standards. Sustainability objectives that trigger payouts should be disclosed.

2. **Salary**: Since salary is one of the few components of compensation that is not "at risk," it should be set at a level that yields the highest value for the company at least cost. In general, salary should be set to reflect responsibilities, tenure and past performance, and to be tax efficient—meaning no more than $1 million.

   a. **Above-median Salary**: The compensation committee should publicly disclose its rationale for paying salaries above the median of the peer group.
   b. **Employee Compensation**: Compensation to employees should be made to enable them to meet at least their basic needs and provide the opportunity to improve their skills and capabilities in order to raise their social and economic opportunities.

3. **Incentive Compensation**

   a. **Performance Link:** A significant portion of compensation should be comprised of "at risk" pay linked to optimizing the company's operating performance and profitability that results in sustainable long-term shareowner value creation.
   b. **Types of Incentive Compensation:** The types of incentive compensation to be awarded should be disclosed such as the company's use of options, restricted stock, performance shares or other types. Compensation committees should disclose the size, distribution, vesting requirements, other performance criteria and grant timing of each type of long-term incentive award granted to the executive oversight group. Compensation committees also should explain how each component contributes to the company's long-term performance objectives.
   c. **Establishing Performance Metrics:** Performance metrics such as total stock return, return on capital, return on equity and return on assets, should be set before the start of a compensation period while the previous years' metrics which triggered incentive payouts should be disclosed. The compensation committee should approve formulaic bonus plans containing specific qualitative and quantitative performance-based operational measures designed to reward executives for superior performance related to operational/strategic/other goals set by the board. Such awards should be capped at a reasonable maximum level. These caps should not be calculated as percentages of accounting or other financial measures (such as revenue, operating income or net profit), since these figures may change dramatically due to mergers, acquisitions and other non-performance-related

strategic or accounting decisions.

d. **Multiple Performance Metrics:** Plan design should utilize multiple performance metrics when linking pay to performance.
e. **Performance Hurdles:** Performance hurdles that align the interests of management with long-term shareowners should be established with incentive compensation being directly tied to the attainment and/or out-performance of such hurdles. Provisions by which compensation will not be paid if performance hurdles are not obtained should be disclosed to shareowners.
f. **Retesting Incentive Compensation:** Provisions for the resetting of performance hurdles in the event that incentive compensation is retested should be disclosed.
g. **Clawback Policy:** Companies should recapture incentive payments that were made to executives on the basis of having met or exceeded performance targets during a period of fraudulent activity or a material negative restatement of financial results for which executives are found personally responsible.

4. **Equity Compensation**

a. **Equity Ownership:** Executive equity ownership should be required through the attainment and continuous ownership of a significant equity investment in the company. Executive stock ownership guidelines and holding requirements should be disclosed to shareowners on an annual basis. In addition to equity ownership, a company should make full disclosure of any pledging policies. Further, stock subject to the ownership requirements should not be pledged or otherwise encumbered.
b. **Employee Share Dealing**: The board should develop clear rules regarding any trading by directors and employees in the company's own securities. Individuals should not benefit directly or indirectly from knowledge which is not generally available to the market.
c. **Hedging:** The use of derivatives or other structures to hedge director or executive stock ownership undermines the alignment of interest that equity compensation is intended to provide. Companies should therefore prohibit the activity and provide full disclosure of any hedging policies.
d. **Post-retirement Holdings**: Executives should be required to continue to satisfy the minimum stock holding requirements for at least six months after leaving the company.
e. **Equity Grants Linked to Performance:** Equity based compensation plans should incorporate performance based equity grant vesting requirements tied to achieving performance metrics. The issuance of discounted equity grants or accelerated vesting are not desirable performance based methodologies. Stock awards should not be payable based solely on the attainment of tenure requirements.
f. **Unvested Equity Acceleration upon a Change-in-Control:** In the event of a merger, acquisition, or change-in-control, unvested equity should not accelerate but should instead convert into the equity of the newly formed company.
g. **Recapturing Dividend Equivalent Payouts:** Companies should develop and disclose a policy for recapturing dividend equivalent payouts on equity

that does not vest. In addition, companies should ensure voting rights are not permitted on unvested equity.

h. **Equity Grant Vesting Period:** Equity grants should vest over a period of at least three years.
i. **Equity Grant Repricing:** Equity grant repricing without shareowner approval should be prohibited.
j. **Grant Timing**: Except in extraordinary circumstances, such as a permanent change in performance cycles, long-term incentive awards should be granted at the same time each year. Companies should not coordinate stock award grants with the release of material non-public information. The grants should occur whether recently publicized information is positive or negative, and stock options should never be backdated.
k. **Evergreen or Reload Provisions:** “Evergreen” or “Reload” provisions should be prohibited.
l. **Distribution of Equity Compensation:** How equity-based compensation will be distributed within various levels of the company should be disclosed.
m. **Equity Dilution and Run Rate Provisions:** Provisions for addressing the issue of equity dilution, the intended life of an equity plan, and the expected yearly run rate of the equity plan should be disclosed.
n. **Equity Repurchase Plans:** If the company intends to repurchase equity in response to the issue of dilution, the equity plan should clearly articulate how the repurchase decision is made in relation to other capital allocation alternatives.
o. **Shareowner Approval:** All equity based compensation plans or material changes to existing equity based compensation plans should be shareowner approved.
p. **Cost of Equity Based Compensation:** Reasonable ranges which the board will target the total cost of new or material changes to existing equity based compensation plans should be disclosed. The cost of new or material changes to existing equity based compensation plans should not exceed that of the company’s peers unless the company has demonstrated consistent long-term economic outperformance on a peer relative basis.
q. **Gross-ups**: Senior executives should not receive gross-ups beyond those provided to all the company’s employees.
r. **Tabular Disclosure**: The annual proxy statement should include a table detailing the overhang represented by unexercised options and shares available for award and a discussion of the impact of the awards on earnings per share.

5. **Stock Options**

a. **Board Approval:** The board’s methodology and corresponding details for approving stock options for both company directors and employees should be highly transparent and include disclosure of: 1) quantity, 2) grant date, 3) strike price, and 4) the underlying stock’s market price as of grant date. The approval and granting of stock options for both directors and employees should preferably occur on a date when all corporate actions are taken by the board. The board should also require a report from the CEO stating specifically how the board’s delegated authority to issue stock options to employees was used during the prior year.

b. **Performance Options:** Stock options should be: (1) indexed to peer groups or (2) premium-priced and/or (3) vest on achievement of specific performance targets that are based on challenging quantitative goals.
c. **Discount Options:** Discount options should not be awarded.
d. **Option Repricing:** “Underwater” options should not be repriced or replaced (either with new options or other equity awards), unless approved by shareowners. Repricing programs, with shareowner approval, should exclude directors and executives, restart vesting periods and mandate value-for-value exchanges in which options are exchanged for a number of equivalently valued options/shares.

6. **Use of “Other” Forms of Compensation**: Compensation policies should include guidelines by which the company will use alternative forms of compensation (“perquisites”), and the relative weight in relation to total compensation if perquisites are utilized. To the degree that the company will provide perquisites, it should clearly articulate how shareowners should expect to realize value from these other forms of compensation.

7. **Retirement Plans**

   a. **Defined Contribution/Benefit Plans:** Should be clearly disclosed in tabular format showing all benefits available whether from qualified or non-qualified plans and net of any offsets.
   b. **Supplemental Executive Retirement Plans (SERPs):** Supplemental plans should be an extension of the retirement program covering other employees. They should not include special provisions that are not offered under plans covering other employees, such as above-market interest rates and excess service credits. Payments such as stock and stock options, annual/long-term bonuses and other compensation not awarded to other employees and/or not considered in the determination of retirement benefits payable to other employees should not be considered in calculating benefits payable under SERPs.
   c. **Deferred Compensation Plans:** Investment alternatives offered under deferred compensation plans for executives should mirror those offered to employees in broad-based deferral plans. Above-market returns should not be applied to executive deferrals, nor should executives receive “sweeteners” for deferring cash payments into company stock.

8. **Severance Agreements**

   a. **Severance Agreement Disclosure:** In cases where the company will consider severance agreements, the policy should contain the overall parameters of how such agreements will be used including the specific detail regarding the positions within the company that may receive severance agreements; the maximum periods covered by the agreements; provisions by which the agreements will be reviewed and renewed; any hurdles or triggers that will affect the agreements; a clear description of what would and would not constitute termination for cause; and disclosure of where investors can view the entire text of severance agreements.

b. **Severance Agreement Amendments:** Material amendments to severance agreements should be disclosed to shareowners.
c. **Shareowner Approval of Severance Payments:** Severance payments that provide benefits with a total present value exceeding market standards should be ratified by shareowners.

9. **Employment Contracts**: Companies should only provide employment contracts to executives in limited circumstances, such as to provide modest, short-term employment security to a newly hired or recently promoted executive. Such contracts should have a specified termination date (not to exceed three years) and contracts should not be "rolling" or be on an open-ended basis.

10. **Change-in-control Payments**: Any provisions providing for compensation following change-in-control events should be "double-triggered." That is, such provisions should stipulate that compensation is payable only: (a) after a control change actually takes place and (b) if a covered executive's job is terminated because of the control change.

11. **Director Compensation:** Pay for a non-executive director and/or a non-executive chair is structured in a way which ensures independence, objectivity, and alignment with shareowners' interests. The annual director compensation disclosure included in the proxy materials should include a discussion of the philosophy for director pay and the processes for setting director pay levels.

    a. **Combination of Cash and Equity:** Director compensation should be a combination of cash and stock in the company.
    b. **Equity Ownership:** Director equity ownership should be required through the attainment and continuous ownership of an equity investment in the company. Director stock ownership guidelines and holding requirements should be disclosed to shareowners on an annual basis. Equity obtained with an individual's own capital provides the best alignment of interests with other shareowners.
    c. **Vesting of Equity-based Awards**: Equity-based compensation to non-employee directors should be fully vested on the grant date. The main benefits are the immediate alignment of interests with shareowners and the fostering of independence and objectivity for the director.
    d. **Amount of Annual Retainer**: The annual retainer should be the sole form of cash compensation paid to non-employee directors. Ideally, it should reflect an amount appropriate for a director's expected duties, including attending meetings, preparing for meetings/discussions and performing due diligence on sites/operations (which should include routine communications with a broad group of employees). In some combination, the retainer and the equity component also reflect the director's contribution from experience and leadership. Retainer amounts may be differentiated to recognize that certain non-employee directors - possibly including independent board chairs, independent lead directors, committee chairs or members of certain committees - are expected to spend more time on board duties than other directors.
    e. **Performance-based Compensation**: Performance-based compensation for

directors creates potential conflicts with the director's primary role as an independent representative of shareowners and is therefore not recommended.

f. **Perquisites**: Directors should not receive perquisites other than those that are meeting-related, such as airfare, hotel accommodation or modest travel/accident insurance. Health, life and other forms of insurance; matching grants to charities; financial planning; automobile allowances and other similar perquisites cross the line as benefits offered to employees. Charitable awards programs are an unnecessary benefit; directors interested in posthumous donations can do so in their own via estate planning. Infrequent token gifts of modest value are not considered perquisites.
g. **Employment Contracts, Severance and Change-of-control Payments**: Non-employee directors should not be eligible to receive any change-in-control payments or severance arrangements.
h. **Retirement Benefits**: Since non-employee directors are elected representatives of shareowners and not company employees, they should not be offered retirement benefits, such as defined benefit plans or deferred stock awards, nor should they be entitled to special post-retirement perquisites.
i. **Deferred Compensation Plans**: Directors may defer cash pay via a deferred compensation plan for directors. However, such investment alternatives offered under deferred compensation plans for directors should mirror those offered to employees in broad-based deferral plans. Non-employee directors should not receive "sweeteners" for deferring cash payments into company stock.
j. **Disgorgement**: Directors should be required to repay compensation to the company in the event of malfeasance or a breach of fiduciary duty involving the director.

D. Corporate Reporting

CalPERS expects fair, accurate and timely reporting on how companies employ and identify risks related to financial, human and physical capital, in order to generate sustainable economic returns.

1. **Integrated Financial Reporting:** Financial reporting plays an integral role in the capital markets by providing transparent and relevant information about the economic performance and condition of businesses. Effective financial reporting depends on high quality accounting standards, as well as consistent application, rigorous independent audit and enforcement of those standards. Companies should provide for the integrated representation of operational, financial, environmental, social, and governance performance in terms of both financial and non-financial results in order to offer investors better information for assessing risk. The board should provide an integrated report that puts historical performance into context, and portrays the risks, opportunities and prospects for the company in the future, helping shareowners understand a company's strategic objectives and its progress towards meeting them. Such disclosures should:

a. be linked to the company's business model.
b. be genuinely informative and include forward-looking elements where this will enhance understanding.
c. describe the company's strategy, and associated risks and opportunities, and explain the board's role in assessing and overseeing strategy and the management of risks and opportunities.
d. be accessible and appropriately integrated with other information that enables shareowners to obtain a picture of the whole company.
e. use key performance indicators that are linked to strategy and facilitate comparisons.
f. use objective metrics where they apply and evidence-based estimates where they do not; and
g. be strengthened where possible by independent assurance that is carried out annually and with regard to established disclosure standards.

2. **Transparency**: Operational, financial, and governance information about companies must be readily transparent to permit accurate market comparisons; this includes disclosure and transparency of objective globally accepted minimum accounting standards, such as the International Financial Reporting Standards (IFRS).

   a. **Comprehensive Disclosure:** The board should present a balanced and understandable assessment of the company's position and prospects in the annual report and accounts in order for shareowners to be able to assess the company's performance, business model, strategy and long-term prospects.
   b. **Materiality**: The board should disclose relevant and material information on a timely basis so as to allow shareowners to take into account information which assists in identifying risks and sources of wealth creation. Issues material to shareowners should be set out succinctly in the annual report, or equivalent disclosures, and approved by the board itself.
   c. **Board Governance Principles:** The board should adopt and disclose a written statement of its own governance principles, and re-evaluate them on at least an annual basis.
   d. **Corporate Responsibility:** It is recommended that corporations adopt the Global Reporting Initiative Sustainability Reporting Guidelines to disclose economic, environmental, and social impacts.

3. **Proxy Materials:** Proxy materials should be written in a manner designed to provide shareowners with the information necessary to make informed voting decisions. Similarly, proxy materials should be distributed in a manner designed to encourage shareowner participation. All shareowner votes, whether cast in person or by proxy, should be formally counted with vote outcomes formally announced.

4. **Auditor's Enhanced Reporting to Investors**: Auditors should provide independent assurance and attestation to the quality of financial statements to instill confidence in the providers of capital. Auditors should bring integrity, independence, objectivity, and professional competence to the financial

reporting process. The audit opinion should state whether the financial statements and disclosures are complete, materially accurate, and free of material misstatement, whether caused by error or fraud. Auditors should provide a reasonable and balanced assurance on financial reporting matters to investors in narrative reports such as an Auditor's Discussion and Analysis (AD&A) or a Letter to the Shareowners. Enhanced reporting should include:

a. Business, operational and risks believed to exist and considered.
b. Assumptions used in judgments that materially affect the financial statements, and whether those assumptions are at the low or high end of the range of possible outcomes.
c. Appropriateness of the accounting policies adopted by the company.
d. Changes to accounting policies that have a significant impact on the financial statements.
e. Methods and judgments made in valuing assets and liabilities.
f. Unusual transactions.
g. Accounting applications and practices that are uncommon to the industry.
h. Identification of any matters in the Annual Report that the auditors believe are incorrect or inconsistent with the information contained in the financial statements or obtained in the course of their audit.
i. Audit issues and their resolutions, which the audit partner documents in a final audit memo to the Audit Committee.
j. Quality and effectiveness of the governance structure and risk management.
k. Completeness and reasonableness of the Audit Committee report.

5. **Stakeholder Relations**: CalPERS believes that corporations should strive for active cooperation with stakeholders. This cooperation will be most likely to create wealth, employment and sustainable economies. With adequate, accurate and timely data disclosure of environmental, social, and governance practices, shareowners are able to more effectively make investment decisions by taking into account those practices of the companies in which the System invests.

6. **Environmental Management Practices:** Good practice includes development of robust policies and practices to address both risk and opportunity arising from environmental issues. Ceres provides an example on climate change as follows:

Board Oversight:

a. Board is actively engaged in climate change policy and has assigned oversight responsibility to board member, board committee or full board.

Management Execution:

b. Chairman/CEO assumes leadership role in articulating and executing climate change policy.
c. Top executives and/or executive committees assigned to manage climate change response strategies.
d. Climate change initiatives are integrated into risk management and mainstream business activities.

e. Executive officers' compensation is linked to attainment of environmental goals and greenhouse gas emission targets.

Public Disclosure:

f. Securities filings disclose material risks and opportunities posed by climate change.

g. Public communications offer comprehensive, transparent presentation of response measures.

Emissions Accounting:

h. Company calculates and registers greenhouse gas emissions savings and offsets from operations.

i. Company conducts annual inventory of greenhouse gas emissions and publicly reports results.

j. Company has an emissions baseline by which to gauge future greenhouse gas emissions trends.

k. Company has third-party verification process for greenhouse gas emissions data.

Strategic Planning:

l. Company sets absolute greenhouse gas emission reduction targets for facilities, energy use, business travel and other operations (including direct emissions.)

m. Company participates in greenhouse gas emissions trading programs – up to 30.

n. Company pursues business strategies to reduce greenhouse gas emissions, minimize exposure to regulatory and physical risks, and maximize opportunities from changing market forces and emerging controls.

7. **Codes of Conduct/Ethics:** The board should adopt high standards of business ethics through codes of conduct/ethics (or similar instrument) and oversee a culture of integrity, notwithstanding differing ethical norms and legal standards in various countries. This should permeate all aspects of the company's operations, ensuring that its vision, mission and objectives are ethically sound and demonstrative of its values. Codes should be effectively communicated and integrated into the company's strategy and operations, including risk management systems and remuneration structures.

   a. **Behavior and Conduct**: The board should foster a corporate culture which ensures that employees understand their responsibilities for appropriate behavior. There should be appropriate board level and staff training in all aspects relating to corporate culture and ethics. Due diligence and monitoring programs should be in place to enable staff to understand relevant codes of conduct and apply them effectively to avoid company involvement in inappropriate behavior.

   b. **Bribery and Corruption:** The board should ensure that management has implemented appropriately stringent policies and procedures to mitigate the risk of bribery and corruption or other malfeasance. Such policies and procedures should be communicated to shareowners and other interested parties.

c. **Whistleblowing**: The board should ensure that the company has in place an independent, confidential mechanism whereby an employee, supplier or other stakeholder can (without fear of retribution) raise issues of particular concern with regard to potential or suspected breaches of a company's code of ethics or local law.

d. **Prohibit Greenmail:** Every company should prohibit greenmail.

8. **Company General Meetings:** The general meeting agenda should be posted on the company's website at least one month prior to the meeting taking place. The agenda should be clear and properly itemized and include the date and location of the meeting as well as information regarding the issues to be decided at the meeting.

   a. **Vote Deadline**: The board should clearly publicize a date by which shareowners should cast their voting instructions.
   b. **Share Blocking**: The practice of share blocking or requirements for lengthy share holdings should be discontinued.
   c. **Selection and Notification of Meeting Time and Location**: Corporations should make shareowners' expense and convenience primary criteria when selecting the time and location of shareowner meetings. Appropriate notice of shareowner meetings, including notices concerning any change in meeting date, time, place or shareowner action, should be given to shareowners in a manner and within time frames that will ensure that shareowners have a reasonable opportunity to exercise their franchise.
   d. **Record Date and Ballot Item Disclosure**: To promote the ability of shareowners to make informed decisions regarding whether to recall loaned shares: (1) shareowner meeting record dates should be disclosed as far in advance of the record date as possible, and (2) proxy statements should be disclosed before the record date passes whenever possible.
   e. **Timely Disclosure of Voting Results**: A company should broadly and publicly disclose in a timely manner the final results of votes cast at annual and special meetings of shareowners. Whenever possible, preliminary results should be announced at the annual or special meeting of shareowners. If a board-endorsed resolution has been opposed by a significant proportion of votes, the company should explain subsequently what actions were taken to understand and respond to the concerns that led shareowners to vote against the board's recommendation.
   f. **Election Polls**: Polls should remain open at shareowner meetings until all agenda items have been discussed and shareowners have had an opportunity to ask and receive answers to questions concerning them.
   g. **Meeting Adjournment and Extension**: Companies should not adjourn a meeting for the purpose of soliciting more votes to enable management to prevail on a voting item. A meeting should only be extended for compelling reasons such as vote fraud, problems with the voting process or lack of a quorum.
   h. **Electronic Meetings**: Companies should hold shareowner meetings by remote communication (so-called "virtual" meetings) only as a supplement to traditional in-person shareowner meetings, not as a substitute. Companies

incorporating virtual technology into their shareowner meeting should use it as a tool for broadening, not limiting, shareowner meeting participation. With this objective in mind, a virtual option, if used, should facilitate the opportunity for remote attendees to participate in the meeting to the same degree as in-person attendees.

i. **Director Attendance**: All directors should attend the annual shareowners' meeting and be available, when requested by the chair, to respond directly to oral or written questions from shareowners.
j. **Broker Non-Votes:** Broker non-votes should be counted for quorum purposes only.

E. Regulatory Effectiveness

It is important to have effective regulation as it protects CalPERS as an investor from externalities, maintains fair, orderly and efficient financial markets, and facilitates capital formation. In order to fulfill their vital functions, regulators need to have funding which is independent, sufficient, and multi-year.

1. **Code of Best Practices:** Each capital market in which shares are issued and traded should adopt its own Code of Best Practices to promote transparency of information, prevention of harmful labor practices, investor protection, and corporate social responsibility. Where such a code is adopted, companies should disclose to their shareowners whether they are in compliance.

2. **Financial Markets:** Policy makers and standards setters who impact investment portfolio risk and return should promote fair, orderly, and effectively regulated financial markets through addressing the following:

   a. **Transparency:** To promote full disclosure so that the financial markets provide incentives that price risk and opportunity.
   b. **Governance:** To foster alignment of interest, protect investor rights and independence of regulators.
   c. **Systemic Risk:** For earlier identification by regulators of issues that give rise to overall market risk that threaten global markets and foster action that mitigates those risks.

3. **Global Accounting Standards:** Convergence to one set of high quality global accounting standards to ensure integrity of financial reporting without compromising quality is critical.

4. **Political Stability:** Progress toward the development of basic democratic institutions and principles, including such things as: a strong and impartial legal system and respect and enforcement of property and shareowner rights. Political stability encompasses:

   a. **Political risk:** Internal and external conflict, corruption, the military and religion in politics, law and order, ethnic tensions, democratic accountability, and bureaucratic quality.
   b. **Civil liberties:** Freedom of expression, association and organization rights;

rule of law and human rights; free trade unions and effective collective bargaining; personal autonomy and economic rights.

c. **Independent judiciary and legal protection**: An absence of irregular payments made to the judiciary, the extent to which there is a trusted legal framework that honors contracts, clearly delineates ownership and protects financial assets.

5. **Transparency:** Financial transparency, including elements of a free press, is necessary for investors to have truthful, accurate and relevant information. Transparency encompasses:

   a. **Freedom of the press:** Structure of the news delivery system in a country, laws and their promulgation with respect to the influence of the news, the degree of political influence and control, economic influences on the news, and the degree to which there are violations against the media with respect to physical violations and censorship.
   b. **Monetary and fiscal transparency:** The extent to which governmental monetary and fiscal policies and implementation are publicly available in a clear and timely manner, in accordance with international standards.
   c. **Stock exchange listing requirements:** Stringency of stock exchange listing requirements with respect to frequency of financial reporting, the requirement of annual independent audits, and minimal financial viability.
   d. **Accounting standards:** The extent to which U.S. Generally Accepted Accounting Principles, or International Accounting Standards are used in financial reporting and whether the country is a member of the International Accounting Standards Council.

6. **Productive Labor Practices:** No harmful labor practices or use of child labor. In compliance, or moving toward compliance, with the International Labor Organization (ILO) Declaration on the Fundamental Principles and Rights at Work. Productive Labor Practices encompasses:

   a. **ILO ratification:** Whether the convention is ratified, not ratified, pending ratification or denounced.
   b. **Quality of enabling legislation:** The extent to which the rights described in the ILO convention are protected by law.
   c. **Institutional capacity:** The extent to which governmental administrative bodies with labor law enforcement responsibility exist at the national, regional and local levels.
   d. **Effectiveness of implementation:** Evidence that enforcement procedures exist and are working effectively and evidence of a clear grievance process that is utilized and provides penalties that have deterrence value.

7. **Market Regulation and Liquidity:** Regulators should address reputational risk and ensure potential market and currency volatility is adequately rewarded. Market regulation and liquidity encompasses: market capitalization, change in market capitalization, average monthly trading volume, growth in listed securities, market volatility as measured by standard deviation, and return/risk ratio.

8. **Capital Market Openness:** Regulators should ensure free market policies, openness to foreign investors, and legal protection for foreign investors. Capital market openness encompasses:

    a. **Foreign investment:** Degree to which there are restrictions on foreign ownership of local assets, repatriation restrictions or un-equal treatment of foreigners and locals under the law.
    b. **Trade policy:** Degree to which there are deterrents to free trade such as trade barriers and punitive tariffs.
    c. **Banking and finance:** Degree of government ownership of banks and allocation of credit, freedom financial institutions have to offer all types of financial services and protectionist banking regulations against foreigners.

9. **Settlement Proficiency/Transaction Costs**: Regulators should ensure reasonable trading and settlement proficiency and reasonable transaction costs. Settlement proficiency/transaction costs encompass:

    a. **Trading and settlement proficiency:** Degree to which a country's trading and settlement is automated, and success of the market in settling transactions in a timely, efficient manner.
    b. **Transaction costs:** The costs associated with trading in a particular market, including stamp taxes and duties, amount of dividends and income taxes and capital gains taxes.

United Nations Supported Principles for Responsible Investment

Launched in April 2006, The Principles for Responsible Investment (PRI) provides the framework for investors to give appropriate consideration to environment, social and corporate governance (ESG) issues. The PRI was created as an initiative of the UN Secretary-General and coordinated by the UNEP Finance Initiative and the UN Global Compact. An international working group of 20 institutional investors was supported by a 70-person multi-stakeholder group of experts from the investment industry, intergovernmental and governmental organizations, civil society and academia. CalPERS is one of the original signatories.

The Principles

1. We will incorporate ESG issues into investment analysis and decision-making processes.

2. We will be active owners and incorporate ESG issues into our ownership policies and practices.

3. We will seek appropriate disclosure on ESG issues by the entities in which we invest.

4. We will promote acceptance and implementation of the Principles within the investment industry.

5. We will work together to enhance our effectiveness in implementing the Principles.

6. We will each report on our activities and progress towards implementing the Principles.

In signing the Principles, we as investors publicly commit to adopt and implement them, where consistent with our fiduciary responsibilities. We also commit to evaluate the effectiveness and improve the content of the Principles over time. We believe this will improve our ability to meet commitments to beneficiaries as well as better align our investment activities with the broader interests of society.

We encourage other investors to adopt the Principles.

Additional information can be found at www.unpri.org.

APPENDIX B

LIST OF MEMBERSHIPS AND ENDORSEMENTS SUPPORTED BY CALPERS

1. **The Global Sullivan Principles**
   https://www.sullivanprinciples.html/

2. **UN Global Compact Principles**
   https://www.unglobalcompact.org/

3. **Council of Institutional Investors (CII)**
   http://www.cii.org/

4. **International Corporate Governance Network Principles (ICGN)**
   https://www.icgn.org/

5. **Ceres**
   http://www.ceres.org/

6. **Investor Network on Climate Risk (INCR)**
   http://www.ceres.org/investor-network/incr

Investor Statement to Banks Financing the Dakota Access Pipeline

Bank of Tokyo-Mitsubishi UFJ (Mitsubishi UFJ), BayernLB (Bayerische Landesbank), BBVA (BancoBilbao Vizcaya Argentaria), BNP Paribas, Citibank (Citigroup), Crédit Agricole, DNB, ICBC (Industrial and Commercial Bank of China), ING, Intesa Sanpaolo, Mizuho Bank (Mizuho Financial Group), Natixis, Société Générale, SMBC (Sumitomo Mitsui Financial Group), SunTrust Bank, TD Securities (Toronto-Dominion Bank), Wells Fargo

The undersigned investors, representing $653 billion in assets under management, encourage the banks listed above to address or support the Standing Rock Sioux Tribe's request for a reroute of the Dakota Access Pipeline (DAPL) that avoids their treaty territory[1]. We believe this is warranted to protect the banks' reputation and consumer base and to avoid legal liabilities. As investors we are very concerned by the reputational and potential financial risks due to these banks being associated with DAPL.

Since 2014, the Standing Rock Sioux Tribe has opposed DAPL's projected route, which crosses their drinking water, sacred sites, and treaty territory. The Tribe has further noted that development of the projected route did not meet the international standard for consultation for Free, Prior, and Informed Consent and there have been serious and credible allegations of irregularities regarding the environmental review for DAPL. We understand a number of the banks listed above have commissioned a report by Foley Hoag on the adequacy of the consultation process followed by Energy Transfer Partners, the lead project developer. In December 2016, the US Army Corps of Engineers denied Energy Transfer Partners the easement needed to complete construction, and announced plans to prepare an environmental impact statement and explore alternative routes. Following President Trump's issuance of a memorandum directing approval, the Army Corps abruptly shifted course and on February 8th granted the final easement required for DAPL's current project route. The Tribe has vowed to fight any alteration of the environmental review process in court.

We are concerned that if DAPL's projected route moves forward, the result will almost certainly be an escalation of conflict and unrest as well as possible contamination of the water supply. North Dakota state and local governments have spent over $22 million on law enforcement costs since August 2016, and demonstrators have already been arrested and cleared from the area with considerable use of force.

Banks with financial ties to the Dakota Access Pipeline may be implicated in these controversies and may face long-term brand and reputational damage resulting from consumer boycotts and possible legal liability. As major shareowners of these banks, we are very concerned about the financial risks this poses to the investments we oversee and to those whom we serve as fiduciaries. To date, we understand that consumers have closed

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[1] The Standing Rock Sioux Tribe's treaty territory extends well beyond the borders of its reservation. In its 1980 decision United States v. Sioux Nation of Indians, 448 U.S. 371, 388, the U.S. Supreme Court ruled that the Standing Rock Sioux territories (including Lake Oahe) were wrongly removed from the Tribe's control by the U.S. government and recognized its claim. The U.S. government offered compensation, but the Tribe did not accept the offer as a replacement for control of the territory.

bank accounts worth over $53 million—and are threatening to pull another $2.3 billion—from the banks financing DAPL. We note that ABN AMRO announced recently it would discontinue its lending relationship to Energy Transfer Equity if "an acceptable non-violent solution [is not] found among all parties impacted by the construction of the DAPL, including the Standing Rock Sioux Tribe."

We understand that the banks providing the project finance have contractual obligations to DAPL, but the extreme controversy tied to the project warrants their urgent action. The Standing Rock Sioux Tribe has repeatedly stated that they do not oppose energy independence, and would be amenable to a reroute of the Dakota Access Pipeline that avoids their treaty territory. We call on the banks to address or support the Tribe's request for a reroute and utilize their influence as a project lender to reach a peaceful solution that is acceptable to all parties, including the Tribe.

Date – February 16, 2017
Time – 7:30 PM EST

See attached list of signatories.

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President and Founder
Boston Common Asset Management, LLC

Matthew Smith
Head of Sustainable Investments
Storebrand Asset Management

John Streur
President and CEO
Calvert Research and Management

Anne Simpson
Investment Director, Sustainability
California Public Employees' Retirement System

New York City Comptroller Scott M. Stringer, on behalf of the New York City Teachers' Retirement System, the New York City Employees' Retirement System, the New York City Fire Department Pension Fund, and the Board of Education Retirement System of the City of New York

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Adrian Dominican Sisters, Portfolio Advisory Board

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As You Sow

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Signatory List – as of February 17, 2017
(10 AM EST)

Public Summary of Foley Hoag LLP Report, "Good Practice for Managing the Social Impacts of Oil Pipelines in the United States"

Due to their linear nature, pipeline projects affect a large number of stakeholders, which increases the likelihood of broad opposition and protests. Tribal opposition to projects in the United States sometimes reflects fundamental disagreements between the U.S. government and tribes about tribal rights. Many environmentalists believe that preventing pipeline projects decreases the risk of oil spills, increases the cost of energy produced with oil, and makes renewable energy more attractive. Protests against oil pipelines also reflects decreasing public trust that existing governmental pipeline approval processes will adequately prevent environmental harm. Due to these increasing concerns, companies are likely to find that legal compliance by itself is insufficient to secure a social license to operate.

Banks providing project finance to the Dakota Access Pipeline Project retained Foley Hoag LLP ("Foley Hoag") to provide an independent report, using the pipeline as a case study, that considered international industry good practice ("IIGP") for community engagement in the development of oil pipelines, with a particular focus on engagement with Indigenous Peoples. Foley Hoag was asked to review the U.S. legal framework on community engagement, tribal consultation, and security, and compare that framework to IIGP. Foley Hoag's final report provided recommendations for the project sponsors on steps they can take beyond U.S. legal requirements, as well as more general industry good practice guidance. The full report is confidential, but the banks requested that Foley Hoag share some general findings and the general industry good practice guidance. This good practice guidance may help companies building future pipelines in the United States incorporate IIGP, and may assist banks when they evaluate those projects.

IIGP for community engagement evolved significantly during the past decade in response to community stakeholder concerns that led to lawsuits, campaigns, and project delays or stoppages. The report's analysis draws extensively on the International Finance Corporation's Environmental and Social Performance Standards ("IFC Performance Standards"), particularly the provisions stemming from the U.N. Declaration on the Rights of Indigenous Peoples. These standards are a widely respected benchmark for good practice with regard to community engagement, including company consultation with Indigenous Peoples and security practices. The IFC Performance Standards were developed for application in emerging market contexts with limited rule of law and were not developed with the U.S. legal context in mind, but they nevertheless provide a useful benchmark to consider for U.S. projects. The report considers the Equator Principles, a voluntary global framework used by financial institutions to assess environmental and social risk in project finance. The analysis also incorporates good practice from the International Council on Mining and Metals ("ICMM"), the U.N. Global Compact, and the Voluntary Principles on Security and Human Rights.

U.S. Law and IIGP

U.S. law differs from IIGP in certain ways. The U.S. legal system is complex, consisting of multiple levels: federal law, the laws of each of the 50 states, and municipal law. U.S. law governing non-tribal community engagement and security varies by state, so companies complying with the law will be required to take varied actions in different states. The potential variations in state law make it challenging for companies that rely only on legal compliance to apply a consistent approach to community engagement or security. Companies are likely to perform more consistently and to reduce risk if they develop corporate policies and processes that go "beyond compliance" and are based on IIGP.

Tribal engagement is governed by U.S. federal law, and tribes have special status and unique rights. The U.S. federal government maintains government-to-government relations with tribes and has the primary power to regulate relations with them. The federal government holds "Indian country" -- tribes' federally recognized lands -- in trust for tribes, which confers fiduciary duties on the government to manage those lands for the good of the tribes. Tribes have internal sovereignty on Indian country and thus typically control, and have the right to profit from, natural resources located on or under Indian country.

Laws, regulations, and Presidential executive orders require federal agencies to consult with Indian tribes if a project is not on Indian country but federal actions -- such as permitting -- may impact the tribes in certain ways. These sources do not, however, provide detailed definitions of consultation. The consultation requirements are also difficult to legally enforce. Each federal agency has developed its own internal, more detailed guidelines. These guidelines differ significantly from one another and are, typically, unenforceable. Such consultation is procedural, offering tribes an opportunity to express concerns, but not guaranteeing that concerns raised during such consultations will ultimately prevent a federal action from affecting the tribes. Tribes have complained about certain aspects of tribal consultation for years, including inconsistent implementation, but they have limited legal recourse. This lack of consistency and clarity in government-to-government consultation creates challenges for both tribes and companies.

Although U.S. law is generally robust, international law – and related IIGP – has developed rapidly in recent years, particularly in the area of indigenous rights. U.S. law is less stringent than international standards in at least two vital ways. First, IIGP provides more detailed guidance than U.S. law on what constitutes company-tribal consultation, and offers a solid foundation for companies and potentially impacted tribes to develop strong working relationships, regardless of the government's level of involvement. IIGP defines consultation as a two-way exchange that begins early, with tribes playing an active role in risk identification, mitigation, and monitoring. Companies may need to financially assist tribes with such activities, and compensate them for certain impacts created by projects.

Second, IIGP calls for company-tribal consultation and even Free, Prior, and Informed Consent ("FPIC") in a significantly wider range of circumstances than U.S. federal law. Under U.S. federal law, if a project is not sited on Indian country, tribal consent is almost never required. Tribes have a right to consultation when projects are not sited on Indian country only in limited circumstances, typically when a federal action would impact their cultural heritage, legally recognized hunting/fishing/gathering rights, or the environment on Indian country. Compounding the challenges, no single federal agency has overall jurisdiction over oil pipelines. As a consequence, permits are typically only required for small portions of such projects, and the portion of the pipeline's cultural or environmental impacts that is likely to require tribal consultation under federal law is correspondingly limited.

In contrast, IIGP calls for company-tribal consultation and even FPIC for certain impacts arising from projects, regardless of whether impacts are on private or public land or a federal permit is required. For example, the IFC Performance Standards call for FPIC when cultural heritage would be significantly impacted or a project would impact traditional or customary lands or resources to which Indigenous Peoples maintain a collective attachment. The guidance below highlights the good practices that IIGP identifies for consultation and/or to achieve consent, and that are vital components to build relationships of trust and mutual benefit between companies and Indigenous Peoples, including in the United States.

Notably, the IFC Performance Standards were developed for emerging economies, where Indigenous Peoples' rights, including their land rights, may be less protected as a matter of law and implementation. However, the evolution in Indigenous Peoples' rights under international law (and related IIGP) contributes to expectations in the United States that are unlikely to be met under current law and practice, potentially leading to project risk and social conflict. IIGP can help address such risk in the United States.

The following table contains good practice guidance based on IIGP that companies developing pipelines in the United States should consider building into their corporate practices. To the extent possible, pipeline companies should work with government agencies to implement these practices.

A. General Consultation and Community Engagement Pipeline companies need to be proactive in engaging all potentially affected stakeholders. For example, companies should:	
A.1	**Ensure appropriate staffing expertise and capacity:** At an early stage of a project, before a company seeks a permit, it should hire staff with expertise in community engagement who can dedicate the necessary time to this activity. Companies should strive for continuity in staffing so that relationships and trust with local communities can be established.
A.2	**Conduct stakeholder mapping:** A company should conduct stakeholder mapping on an ongoing basis and for specific projects to better understand the social landscape in which it operates.
A.3	**Create a stakeholder engagement plan:** The company should develop a stakeholder engagement plan that differentiates between interested stakeholders and stakeholders who are directly impacted by a project. The plan should also identify and focus on stakeholders who are most impacted by the project, or who are marginalized and may require special measures for effective engagement. The engagement should begin before there is a problem or a campaign against the company, and should continue throughout the project lifecycle, which may help to pre-empt or minimize problems and campaigns.
A.4	**Engage in information-sharing:** A company should share information proactively about projects, and try to connect personally with potentially affected stakeholders as much as possible to share accurate information about the project. Potentially affected community members should have an opportunity to share their concerns about the project as well.
A.5	**Establish a grievance mechanism:** A company should establish a grievance mechanism at an early stage of a project and ensure that it is staffed and monitored so that complaints are not only received but resolved in a timely fashion. Complaints should be tracked and timelines by which issues are likely to be resolved should be regularly communicated to complainants. To be effective, grievance mechanisms need to be culturally appropriate. An effective grievance mechanism should help prevent issues from escalating. If a grievance is significant and the parties cannot reach a resolution on their own, the company should consider bringing in a third party mediator.
A.6	**Rely upon expropriation only as a last option, and provide fair compensation:** Given recent pushback against the use of eminent domain for pipeline projects in the United States, companies should rely on expropriation as seldom as possible and only as a last resort. Moreover, companies should evaluate the compensation provided under law and consider whether it is adequate to improve or restore livelihoods. Companies should develop project timelines that allow for time to negotiate with landowners.

B. Engagement with Indigenous Peoples	
To avoid the risk of project opposition, litigation, and delays, companies should incorporate IIGP to develop positive relationships and partnerships. Many of the recommendations below focus on building trust. Companies engaging with Indigenous Peoples may struggle to develop trust with tribes due to the challenging history of relations between Indian tribes and the U.S. government and, in some instances, with companies. To overcome this, companies need to invest in the relationship and spend adequate time on consultation. This does not always fit neatly within normal project timelines. Yet a failure to spend adequate time can also lead to significant and costly operational delays. The following recommendations would help companies better achieve IIGP in the United States:	
B.1	**Develop policy guidance**: Companies should develop guidance that clarifies their position on Indigenous Peoples' rights. Such rights are different from those of other stakeholders under international law, particularly collective procedural rights such as consultation and FPIC. Similarly, tribes enjoy special rights under U.S. law, including collective rights, that differentiate them from other groups. Company policies should reflect this. A policy helps provide internal clarity and, if the guidance is public, sets expectations for external parties. The guidance should be based on IIGP and should identify when companies plan to consult or seek FPIC from Indigenous Peoples for:
B.1.a.	• Potential impacts on tribal cultural heritage that are subject to protections in the IFC Performance Standards, whether or not consultation under the National Environmental Policy Act ("NEPA") or the National Historic Preservation Act ("NHPA") is triggered.
B.1.b.	• Environmental impacts affecting Indian country/water or off-reservation usufructuary rights (e.g. hunting, fishing, gathering), whether or not consultation under NEPA or the NHPA is triggered.
B.1.c.	• Projects on unrecognized traditional lands to which tribes still have a strong and active collective attachment.
B.2	**Conduct due diligence to understand tribal interests and rights:** Companies should conduct due diligence to understand tribes' historical grievances, including with particular federal agencies; tribal land claims and whether tribes continue to seek rights to traditional lands; off-reservation usufructuary rights (e.g. fishing, hunting, or gathering); known cultural heritage sites; and the experiences other companies have had engaging with those tribes. This should help companies define more realistic timelines, approach tribes sensitively, plan projects with consideration of tribal rights and interests, and hire appropriate personnel. Pipeline projects may affect many tribes to varying degrees. To the extent necessary, companies should prioritize engagement with particular tribes if: the activities will occur on reservations, may affect (or are thought to affect) the environment on their reservations/trust lands, may affect off-reservation usufructuary rights, may affect their cultural heritage, or are located on their traditional, unrecognized lands to which they maintain a collective attachment. The more of these factors are present and the more severe the potential impact, the greater the priority that should be given to that tribe.

B. Engagement with Indigenous Peoples *continued*	
B.3	**Consider appropriate timelines:** Company timelines and budgets should take into account the time needed to consult or seek FPIC in accordance with international standards for potentially affected Indian tribes. These processes may lengthen the front end of a project, but also should help ensure the project is able to proceed without significant social unrest.
B.4	**Consult early:** Companies should engage potentially affected Indian tribes early. Under the IFC Performance Standards, for a pipeline this engagement should occur during project planning so that there is still flexibility to adapt the project. Company guidelines should establish a well-defined stage-gated process that calls for and enables the company to consult earlier than regulations require in certain situations, thus facilitating tribal input into site selection and potential re-routing. This would enable consideration of tribal views in routing, environmental risk assessment, and mitigation plans. Ideally, companies would undertake this early engagement along with the permitting agency. Consultation should be ongoing throughout the project life cycle.
B.5	**Ensure appropriate staffing and expertise:** Companies should hire staff with experience engaging with Indian tribes to conduct consultation for projects that might have impacts on tribes. Companies also sometimes hire tribal members to assist with community liaison. Companies would also benefit from consulting with Indian tribes and/or anthropologists to design and support the stakeholder engagement process, particularly if trust between the parties is low. Company representation at meetings with tribal leadership should be at a sufficiently senior level. Conducting such consultation should be written into relevant job descriptions and performance indicators. All employees and contractors engaging with tribes should receive cultural training.
B.6	**Share adequate information:** Share information with potentially affected tribes regarding: (1) <u>Project impacts and mitigation</u>: This would include information that is sufficient for them to understand the potential positive and negative impacts of the project, including cumulative effects, as well as planned mitigation steps. This may entail sharing more information than is mandated by law. Information sharing should be a two-way dialogue, where tribes have an opportunity to share potential impacts and concerns with companies and have those taken into account in project planning. (2) <u>The consultation or FPIC process</u>: Given the complexity of agency consultation processes in the United States, and the number of consultation processes in which tribes are asked to participate, companies can play a vital role by sharing information to clarify the project, the government's process, the company's process, and thus can help tribes engage more effectively. Companies should prioritize information sharing with tribes if the activities may affect the environment/water on their reservations/trust lands, may affect their usufructuary rights, are located on their traditional, unrecognized lands and the tribe still has a strong attachment to them, or may affect their cultural heritage. The more of these factors are present and the more severe the potential impact, the greater the priority that should be accorded to the tribe. Companies should share as many documents as possible to help tribes understand project risk, and should redact them when they cannot be shared in full so that tribes have adequate information.

B. Engagement with Indigenous Peoples *continued*	
B.7	**Identify potential cultural heritage impacts together and develop mitigation plans**: If a project will potentially impact cultural heritage, companies should work with the affected Indian tribe's elders, cultural heritage experts, or archeologists to plan cultural heritage assessments, identify those sites, and develop mitigation plans. Many U.S. tribes have their own archaeologists. If they are licensed and meet legal requirements, companies should hire them. Otherwise, companies should incorporate tribal elders into archaeological and cultural surveys at an early stage before on-the-ground assessments begin.
B.8	**Identify potential environmental risks together and include tribal input related to mitigation:** Companies should provide potentially impacted tribes an opportunity to share their concerns about environmental risks and potentially integrate those concerns into Environmental Assessments ("EAs") and other environmental studies. Tribes might be aware of impacts on wildlife or fauna that a conventional environmental study might miss. Moreover, understanding tribal concerns, even if they ultimately prove unfounded, helps companies respond to those concerns and explain why those impacts would not arise. Companies should also provide an opportunity for tribes to suggest and comment on mitigation methodologies, and ensure that the tribes know whether their suggestions were incorporated and, if not, why not. Providing an opportunity for this feedback helps create a positive and respectful working relationship from the beginning, and may help avoid project opposition and protests. Companies may need to provide financial support to potentially impacted tribes so that they can hire experts to assist them and obtain scientifically accurate information about risks. When identifying which tribes might be impacted, companies should consider impacts of the project as a whole, as well as the risk of a spill, even if a spill is improbable.
B.9	**Consider creating an impact-benefit agreement:** These documents are a potential outcome of a consultation or a consent process. They identify the potential impacts of the project on a tribe and how mitigation will occur or the tribe will be compensated for those impacts. If the goal of the engagement process was to obtain FPIC, the document would include a formal statement of that agreement. Impact-benefit agreements can include components such as employment and contracting opportunities, environmental, social, and cultural impact management, compensation or disbursements to address impacts, governance arrangements, and other commitments such as continued access to land. Of particular importance for pipeline companies, impact-benefits agreements can address:
B.9.1	• **A tribal role in monitoring and managing impacts**: Tribes play an ongoing role in monitoring cultural and environmental impacts, particularly in the context of certain projects in Canada and Australia. In many of these instances, a company places funds in escrow for the tribe so that it can hire environmental and other experts as needed and produce its own reports or data. For some projects, the company and the tribe have developed joint environmental and cultural oversight boards, with representation from or selected by each party. A government agency has also joined the oversight board in some cases. Enabling tribes to play a role in monitoring can produce significant benefits. It creates trust in project-related data and mitigation approaches. It also provides an opportunity to develop and maintain a constructive relationship between the company and tribe.

B. Engagement with Indigenous Peoples *continued*	
B.9.2	• **Compensation for impacts:** To the extent that a project is expected to potentially adversely impact a tribe's lands, environment, usufructuary rights, livelihoods, or cultural heritage, companies should provide compensation. Companies should prioritize land-based compensation where feasible. Offering a tribe a revenue stream from the project is another way to build mutual interest in the project's success and to offset impacts. These practices are used in Canada and Australia.
C. Security The security situation facing U.S. pipeline proponents has changed significantly in recent years. Today, pipelines under construction are much more likely to be the subject of protests. Such unrest, in turn, can increase the risk of disproportionate use of force. As a result of these changes, pipeline companies need to be more proactive in their approach to security. To that effect, companies should:	
C.1.	**Seek to use conflict resolution first:** If a situation appears likely to escalate into protests, companies should consider hiring a mutually acceptable third party mediator to help the two sides manage the conflict peacefully through dialogue to attempt to avoid the outbreak of protests and the need to engage security forces. Companies should consider developing a list of respected third party mediators to facilitate quick action in a crisis.
C.2	**Require Private Security Contractors ("PSCs") to act in a manner consistent with the Voluntary Principles on Security and Human Rights and proportional use of force:** Companies should include this expectation in their negotiations and agreements with PSCs.
C.3	**Conduct security risk assessments:** To better understand and address security risks in a responsible manner, companies should consult with a broad range of sources regarding security risks, conflict dynamics, the potential for violence, the effectiveness of rule of law, the human rights records of public and private security, and the risk of equipment transfers from private to public security.
C.4	**Screen potential private security providers:** Companies should not only ensure that security providers are licensed, but also review the security company's record, including any lawsuits or reports regarding the excessive use of force. Companies should ensure that the security provider is adequately screening its employees' records for histories of violence or criminal acts. Companies should also consider whether their chosen security provider has the experience and training to peacefully handle more complex security scenarios, such as large crowds and protests or sabotage of equipment. If not, given the challenges that the pipeline industry currently faces, companies should have in place a back-up provider with such capabilities.
C.5	**Ensure private security providers have adequate training:** Companies should require that private security providers receive robust training on proportionate use of force, conflict resolution, and responsible crowd control, where relevant.

C. Security *continued*	
C.6	**Ensure that security incidents are investigated:** Companies should contractually require their PSCs to report any use of force, weapons discharge, or injury related to security to them. Such incidents should be investigated and any potentially criminal acts reported to the authorities. Security personnel should be disciplined, including by dismissal, if they used excessive force.
C.7	**Engage with public security regarding expectations:** In the United States, corporate influence on the police or other public security forces may be limited, and the ability of public security to act in accordance with international standards regarding the use of force is frequently assumed. Companies should nevertheless clarify with relevant public security that their first priority is protection of human life and health of their own employees and of any protesters. They should make clear that they would never wish for lethal force to be used to protect company property. These steps have the potential benefit of helping to protect the company from the appearance of complicity in public security abuses and potential lawsuits.
C.8	**Avoid sharing equipment with public security:** Companies should ensure that they and their private security providers do not provide equipment to public security forces. Were this equipment to be used against individuals, the company could be considered to be complicit in any abuses. Sharing of equipment is less likely in the U.S. context, where public security is well-equipped. These steps nevertheless have the potential benefit of helping to protect the company from the appearance of complicity in public security abuses and potential lawsuits under the Alien Tort Statute.

THE EQUATOR PRINCIPLES
JUNE 2013

A financial industry benchmark for determining, assessing
and managing environmental and social risk in projects
www.equator-principles.com

EQUATOR PRINCIPLES

CONTENTS

PREAMBLE

Large infrastructure and industrial Projects can have adverse impacts on people and on the environment. As financiers and advisors, we work in partnership with our clients to identify, assess and manage environmental and social risks and impacts in a structured way, on an ongoing basis. Such collaboration promotes sustainable environmental and social performance and can lead to improved financial, environmental and social outcomes.

We, the Equator Principles Financial Institutions (EPFIs), have adopted the Equator Principles in order to ensure that the Projects we finance and advise on are developed in a manner that is socially responsible and reflects sound environmental management practices. We recognise the importance of climate change, biodiversity, and human rights, and believe negative impacts on project-affected ecosystems, communities, and the climate should be avoided where possible. If these impacts are unavoidable they should be minimised, mitigated, and/or offset.

We believe that adoption of and adherence to the Equator Principles offers significant benefits to us, our clients, and local stakeholders through our clients' engagement with locally Affected Communities. We therefore recognise that our role as financiers affords us opportunities to promote responsible environmental stewardship and socially responsible development, including fulfilling our responsibility to respect human rights by undertaking due diligence[1] in accordance with the Equator Principles.

The Equator Principles are intended to serve as a common baseline and framework. We commit to implementing the Equator Principles in our internal environmental and social policies, procedures and standards for financing Projects. We will not provide Project Finance or Project-Related Corporate Loans to Projects where the client will not, or is unable to, comply with the Equator Principles. As Bridge Loans and Project Finance Advisory Services are provided earlier in the Project timeline, we request the client explicitly communicates their intention to comply with the Equator Principles.

EPFIs review the Equator Principles from time-to-time based on implementation experience, and in order to reflect ongoing learning and emerging good practice.

[1] As referenced in the "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework".

SCOPE

The Equator Principles apply globally and to all industry sectors.

The Equator Principles apply to the four financial products described below when supporting a new Project:

1. **Project Finance Advisory Services** where total Project capital costs are US$10 million or more.

2. **Project Finance** with total Project capital costs of US$10 million or more.

3. **Project-Related Corporate Loans**[2] (including Export Finance in the form of Buyer Credit) where all four of the following criteria are met:

    i. The majority of the loan is related to a single Project over which the client has Effective Operational Control (either direct or indirect).

    ii. The total aggregate loan amount is at least US$100 million.

    iii. The EPFI's individual commitment (before syndication or sell down) is at least US$50 million.

    iv. The loan tenor is at least two years.

4. **Bridge Loans** with a tenor of less than two years that are intended to be refinanced by Project Finance or a Project-Related Corporate Loan that is anticipated to meet the relevant criteria described above.

While the Equator Principles are not intended to be applied retroactively, the EPFI will apply them to the expansion or upgrade of an existing Project where changes in scale or scope may create significant environmental and social risks and impacts, or significantly change the nature or degree of an existing impact.

[2] Project-Related Corporate Loans exclude Export Finance in the form of Supplier Credit (as the client has no Effective Operational Control). Furthermore, Project-Related Corporate Loans exclude other financial instruments that do not finance an underlying Project, such as Asset Finance, acquisition finance, hedging, leasing, letters of credit, general corporate purposes loans, and general working capital expenditures loans used to maintain a company's operations.

APPROACH

Project Finance and Project-Related Corporate Loans

The EPFI will only provide Project Finance and Project-Related Corporate Loans to Projects that meet the requirements of Principles 1-10.

Project Finance Advisory Services and Bridge Loans

Where the EPFI is providing Project Finance Advisory Services or a Bridge Loan, the EPFI will make the client aware of the content, application and benefits of applying the Equator Principles to the anticipated Project. The EPFI will request that the client communicates to the EPFI its intention to adhere to the requirements of the Equator Principles when subsequently seeking long term financing. The EPFI will guide and support the client through the steps leading to the application of the Equator Principles.

For Bridge Loans categorised A or B (as defined in Principle 1) the following requirements, where relevant, apply. Where the Project is in the feasibility phase and no impacts are expected during the tenor of the loan, the EPFI will confirm that the client will undertake an Environmental and Social Assessment (Assessment) process. Where Environmental and Social Assessment Documentation (Assessment Documentation) has been prepared and Project development is expected to begin during the tenor of the loan, the EPFI will, where appropriate, work with the client to identify an Independent Environmental and Social Consultant and develop a scope of work to commence an Independent Review (as defined in Principle 7).

Information Sharing

Recognising business confidentiality and applicable laws and regulations, Mandated EPFIs will share, when appropriate, relevant environmental and social information with other Mandated Financial Institutions, strictly for the purpose of achieving consistent application of the Equator Principles. Such information sharing shall not relate to any competitively sensitive information. Any decision as to whether, and on what terms, to provide financial services (as defined in the Scope) will be for each EPFI to make separately and in accordance with its risk management policies. Timing constraints may lead EPFIs considering a transaction to seek authorisation from their clients to start such information sharing before all other financial institutions are formally mandated. EPFIs expect clients to provide such authorisation.

STATEMENT OF PRINCIPLES

Principle 1: Review and Categorisation

When a Project is proposed for financing, the EPFI will, as part of its internal environmental and social review and due diligence, categorise it based on the magnitude of its potential environmental and social risks and impacts. Such screening is based on the environmental and social categorisation process of the International Finance Corporation (IFC).

Using categorisation, the EPFI's environmental and social due diligence is commensurate with the nature, scale and stage of the Project, and with the level of environmental and social risks and impacts.

The categories are:

Category A – Projects with potential significant adverse environmental and social risks and/or impacts that are diverse, irreversible or unprecedented;

Category B – Projects with potential limited adverse environmental and social risks and/or impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures; and

Category C – Projects with minimal or no adverse environmental and social risks and/or impacts.

Principle 2: Environmental and Social Assessment

For all Category A and Category B Projects, the EPFI will require the client to conduct an Assessment process to address, to the EPFI's satisfaction, the relevant environmental and social risks and impacts of the proposed Project (which may include the illustrative list of issues found in Exhibit II). The Assessment Documentation should propose measures to minimise, mitigate, and offset adverse impacts in a manner relevant and appropriate to the nature and scale of the proposed Project.

The Assessment Documentation will be an adequate, accurate and objective evaluation and presentation of the environmental and social risks and impacts, whether prepared by the client, consultants or external experts. For Category A, and as appropriate, Category B Projects, the Assessment Documentation includes an Environmental and Social Impact Assessment (ESIA). One or more specialised studies may also need to be undertaken. Furthermore, in limited high risk circumstances, it may be appropriate for the client to complement its Assessment Documentation with specific human rights due diligence. For other Projects, a limited or focused environmental or social assessment (e.g. audit), or straight-forward application of environmental siting, pollution standards, design criteria, or construction standards may be carried out.

For all Projects, in all locations, when combined Scope 1 and Scope 2 Emissions are expected to be more than 100,000 tonnes of CO_2 equivalent annually, an alternatives analysis will be conducted to evaluate less Greenhouse Gas (GHG) intensive alternatives. Refer to Annex A for alternatives analysis requirements.

Principle 3: Applicable Environmental and Social Standards

The Assessment process should, in the first instance, address compliance with relevant host country laws, regulations and permits that pertain to environmental and social issues.

EPFIs operate in diverse markets: some with robust environmental and social governance, legislation systems and institutional capacity designed to protect their people and the natural environment; and some with evolving technical and institutional capacity to manage environmental and social issues.

The EPFI will require that the Assessment process evaluates compliance with the applicable standards as follows:

1. For Projects located in Non-Designated Countries, the Assessment process evaluates compliance with the then applicable IFC Performance Standards on Environmental and Social Sustainability (Performance Standards) and the World Bank Group Environmental, Health and Safety Guidelines (EHS Guidelines) (Exhibit III).

2. For Projects located in Designated Countries, the Assessment process evaluates compliance with relevant host country laws, regulations and permits that pertain to environmental and social issues. Host country laws meet the requirements of environmental and/or social assessments (Principle 2), management systems and plans (Principle 4), Stakeholder Engagement (Principle 5) and, grievance mechanisms (Principle 6).

The Assessment process will establish to the EPFI's satisfaction the Project's overall compliance with, or justified deviation from, the applicable standards. The applicable standards (as described above) represent the minimum standards adopted by the EPFI. The EPFI may, at their sole discretion, apply additional requirements.

Principle 4: Environmental and Social Management System and Equator Principles Action Plan

For all Category A and Category B Projects, the EPFI will require the client to develop or maintain an Environmental and Social Management System (ESMS).

Further, an Environmental and Social Management Plan (ESMP) will be prepared by the client to address issues raised in the Assessment process and incorporate actions required to comply with the applicable standards. Where the applicable standards are not met to the EPFI's satisfaction, the client and the EPFI will agree an Equator Principles Action Plan (AP). The Equator Principles AP is intended to outline gaps and commitments to meet EPFI requirements in line with the applicable standards.

Principle 5: Stakeholder Engagement

For all Category A and Category B Projects, the EPFI will require the client to demonstrate effective Stakeholder Engagement as an ongoing process in a structured and culturally appropriate manner with Affected Communities and, where relevant, Other Stakeholders. For Projects with potentially significant adverse impacts on Affected Communities, the client will conduct an Informed Consultation and Participation process. The client will tailor its consultation process to: the risks and impacts of the Project; the Project's phase of development; the language preferences of the Affected Communities; their decision-making processes; and the needs of disadvantaged and vulnerable groups. This process should be free from external manipulation, interference, coercion and intimidation.

To facilitate Stakeholder Engagement, the client will, commensurate to the Project's risks and impacts, make the appropriate Assessment Documentation readily available to the Affected Communities, and where relevant Other Stakeholders, in the local language and in a culturally appropriate manner.

The client will take account of, and document, the results of the Stakeholder Engagement process, including any actions agreed resulting from such process. For Projects with environmental or social risks and adverse impacts, disclosure should occur early in the Assessment process, in any event before the Project construction commences, and on an ongoing basis.

EPFIs recognise that indigenous peoples may represent vulnerable segments of project-affected communities. Projects affecting indigenous peoples will be subject to a process of Informed Consultation and Participation, and will need to comply with the rights and protections for indigenous peoples contained in relevant national law, including those laws implementing host country obligations under international law. Consistent with the special circumstances described in

IFC Performance Standard 7 (when relevant as defined in Principle 3), Projects with adverse impacts on indigenous people will require their Free, Prior and Informed Consent (FPIC)[3].

Principle 6: Grievance Mechanism

For all Category A and, as appropriate, Category B Projects, the EPFI will require the client, as part of the ESMS, to establish a grievance mechanism designed to receive and facilitate resolution of concerns and grievances about the Project's environmental and social performance.

The grievance mechanism is required to be scaled to the risks and impacts of the Project and have Affected Communities as its primary user. It will seek to resolve concerns promptly, using an understandable and transparent consultative process that is culturally appropriate, readily accessible, at no cost, and without retribution to the party that originated the issue or concern. The mechanism should not impede access to judicial or administrative remedies. The client will inform the Affected Communities about the mechanism in the course of the Stakeholder Engagement process.

Principle 7: Independent Review

Project Finance

For all Category A and, as appropriate, Category B Projects, an Independent Environmental and Social Consultant, not directly associated with the client, will carry out an Independent Review of the Assessment Documentation including the ESMPs, the ESMS, and the Stakeholder Engagement process documentation in order to assist the EPFI's due diligence, and assess Equator Principles compliance.

The Independent Environmental and Social Consultant will also propose or opine on a suitable Equator Principles AP capable of bringing the Project into compliance with the Equator Principles, or indicate when compliance is not possible.

Project-Related Corporate Loans

An Independent Review by an Independent Environmental and Social Consultant is required for Projects with potential high risk impacts including, but not limited to, any of the following:

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[3] There is no universally accepted definition of FPIC. Based on good faith negotiation between the client and affected indigenous communities, FPIC builds on and expands the process of Informed Consultation and Participation, ensures the meaningful participation of indigenous peoples in decision-making, and focuses on achieving agreement. FPIC does not require unanimity, does not confer veto rights to individuals or sub-groups, and does not require the client to agree to aspects not under their control. Process elements to achieve FPIC are found in IFC Performance Standard 7.

- adverse impacts on indigenous peoples
- Critical Habitat impacts
- significant cultural heritage impacts
- large-scale resettlement

In other Category A, and as appropriate Category B, Project-Related Corporate Loans, the EPFI may determine whether an Independent Review is appropriate or if internal review by the EPFI is sufficient. This may take into account the due diligence performed by a multilateral or bilateral financial institution or an OECD Export Credit Agency, if relevant.

Principle 8: Covenants

An important strength of the Equator Principles is the incorporation of covenants linked to compliance.

For all Projects, the client will covenant in the financing documentation to comply with all relevant host country environmental and social laws, regulations and permits in all material respects.

Furthermore for all Category A and Category B Projects, the client will covenant the financial documentation:

a) to comply with the ESMPs and Equator Principles AP (where applicable) during the construction and operation of the Project in all material respects; and

b) to provide periodic reports in a format agreed with the EPFI (with the frequency of these reports proportionate to the severity of impacts, or as required by law, but not less than annually), prepared by in-house staff or third party experts, that i) document compliance with the ESMPs and Equator Principles AP (where applicable), and ii) provide representation of compliance with relevant local, state and host country environmental and social laws, regulations and permits; and

c) to decommission the facilities, where applicable and appropriate, in accordance with an agreed decommissioning plan.

Where a client is not in compliance with its environmental and social covenants, the EPFI will work with the client on remedial actions to bring the Project back into compliance to the extent feasible. If the client fails to re-establish compliance within an agreed grace period, the EPFI reserves the right to exercise remedies, as considered appropriate.

Principle 9: Independent Monitoring and Reporting

Project Finance

To assess Project compliance with the Equator Principles and ensure ongoing monitoring and reporting after Financial Close and over the life of the loan, the EPFI will, for all Category A and, as appropriate, Category B Projects, require the appointment of an Independent Environmental and Social Consultant, or require that the client retain qualified and experienced external experts to verify its monitoring information which would be shared with the EPFI.

Project-Related Corporate Loans

For Projects where an Independent Review is required under Principle 7, the EPFI will require the appointment of an Independent Environmental and Social Consultant after Financial Close, or require that the client retain qualified and experienced external experts to verify its monitoring information which would be shared with the EPFI.

Principle 10: Reporting and Transparency

Client Reporting Requirements

The following client reporting requirements are in addition to the disclosure requirements in Principle 5.

For all Category A and, as appropriate, Category B Projects:

- The client will ensure that, at a minimum, a summary of the ESIA is accessible and available online[4].
- The client will publicly report GHG emission levels (combined Scope 1 and Scope 2 Emissions) during the operational phase for Projects emitting over 100,000 tonnes of CO_2 equivalent annually. Refer to Annex A for detailed requirements on GHG emissions reporting.

EPFI Reporting Requirements

The EPFI will report publicly, at least annually, on transactions that have reached Financial Close and on its Equator Principles implementation processes and experience, taking into account appropriate

[4] Except in cases where the client does not have internet access.

confidentiality considerations. The EPFI will report according to the minimum reporting requirements detailed in Annex B.

DISCLAIMER

The Equator Principles is a baseline and framework for developing individual, internal environmental and social policies, procedures and practices. The Equator Principles do not create any rights in, or liability to, any person, public or private. Financial institutions adopt and implement the Equator Principles voluntarily and independently, without reliance on or recourse to the IFC, the World Bank Group, the Equator Principles Association, or other EPFIs. In a situation where there would be a clear conflict between applicable laws and regulations and requirements set out in the Equator Principles, the local laws and regulations prevail.

ANNEXES: IMPLEMENTATION REQUIREMENTS

Annex A: Climate Change: Alternatives Analysis, Quantification and Reporting of Greenhouse Gas Emissions

Alternatives Analysis

The alternatives analysis requires the evaluation of technically and financially feasible and cost-effective options available to reduce project-related GHG emissions during the design, construction and operation of the Project.

For Scope 1 Emissions, this analysis will include consideration of alternative fuel or energy sources if applicable. Where an alternatives analysis is required by a regulatory permitting process, the analysis will follow the methodology and time frame required by the relevant process. For Projects in high carbon intensity sectors, the alternatives analysis will include comparisons to other viable technologies, used in the same industry and in the country or region, with the relative energy efficiency of the selected technology.

High carbon intensity sectors include the following, as outlined in the World Bank Group EHS Guidelines: thermal power, cement and lime manufacturing, integrated steel mills, base metal smelting and refining, and foundries.

Following completion of an alternatives analysis, the client will provide, through appropriate documentation, evidence of technically and financially feasible and cost-effective options. This does not modify or reduce the requirements set out in the applicable standards (e.g. IFC Performance Standard 3).

Quantification and Reporting

Quantification of GHG emissions will be conducted by the client in accordance with internationally recognised methodologies and good practice, for example, the GHG Protocol. The client will quantify Scope 1 and Scope 2 Emissions.

The EPFI will require the client to report publicly on an annual basis on GHG emission levels (combined Scope 1 and Scope 2 Emissions) during the operational phase for Projects emitting over 100,000 tonnes of CO_2 equivalent annually. Clients will be encouraged to report publicly on Projects emitting over 25,000 tonnes. Public reporting requirements can be satisfied via regulatory requirements for reporting or environmental impact assessments, or voluntary reporting mechanisms such as the Carbon Disclosure Project where such reporting includes emissions at Project level.

In some circumstances, public disclosure of the full alternatives analysis or project-level emissions may not be appropriate.

Annex B - Minimum Reporting Requirements

The EPFI will report annually and as per the requirements detailed in all of the sections below.

Data and Implementation Reporting

Data and implementation reporting is the responsibility of the EPFI. It will be published on the EPFI's website, in a single location and in an accessible format.

The EPFI will specify the reporting period (i.e. start and end dates) for all data and implementation reporting.

Project Finance Advisory Services Data

The EPFI will report on the total number of Project Finance Advisory Services mandated during the reporting period. The total will be broken down by Sector and Region.

Data for Project Finance Advisory Services will be reported under a separate heading from Project Finance and Project-Related Corporate Loans. Project Finance Advisory Services data may exclude the Category and whether an Independent Review has been carried out because the Project is often at an early stage of development and not all information is available.

Project Finance and Project-Related Corporate Loans Data

The EPFI will report on the total number of Project Finance transactions and total number of Project-Related Corporate Loans that reached Financial Close during the reporting period.

The totals for each product type will be broken down by Category (A, B or C) and then by:

- Sector (i.e. Mining, Infrastructure, Oil and Gas, Power, Others)
- Region (i.e. Americas, Europe Middle East and Africa, Asia Pacific)
- Country Designation (i.e. Designated Country or Non-Designated Country)
- Whether an Independent Review has been carried out

Data for Project Finance transactions and Project-Related Corporate Loans should be shown separately.

Bridge Loans Data

Data for Bridge Loans, due to their nature, are not subject to specific reporting requirements.

Implementation Reporting

The EPFI will report on its implementation of the Equator Principles, including:

- The mandate of the Equator Principles Reviewers (e.g. responsibilities and staffing);
- The respective roles of the Equator Principles Reviewers, business lines, and senior management in the transaction review process;
- The incorporation of the Equator Principles in its credit and risk management policies and procedures.

For the first year of Equator Principles adoption, the EPFI will provide details of its internal preparation and staff training. After the first year, the EPFI may provide details on ongoing training of staff if considered relevant.

Project Name Reporting for Project Finance

The EPFI will submit project name data directly to the Equator Principles Association Secretariat for publication on the Equator Principles Association website.

Project name reporting is:

- applicable only to Project Finance transactions that have reached Financial Close,
- subject to obtaining client consent,
- subject to applicable local laws and regulations, and
- subject to no additional liability for the EPFI as a result of reporting in certain identified jurisdictions.

The EPFI will seek client consent at any time deemed appropriate but no later than Financial Close.

The EPFI will submit the following project name data directly or via a web link:

- Project name (as per the loan agreement and/or as publicly recognised),
- Calendar year in which the transaction reached Financial Close,
- Sector (i.e. Mining, Infrastructure, Oil and Gas, Power, Others),
- Host country name.

Individual EPFIs may want to publish the data as part of their individual reporting, but there is no obligation to do so.

EXHIBITS: SUPPORTING INFORMATION

Exhibit I: Glossary of Terms

Unless specified here, the Equator Principles use definitions as set out in the IFC Performance Standards.

Affected Communities are local communities, within the Project's area of influence, directly affected by the Project.

Assessment (see **Environmental and Social Assessment**).

Assessment Documentation (see **Environmental and Social Assessment Documentation**).

Asset Finance is the provision of a loan for the purchase of assets (such as airplanes, cargo ships, or equipment) in exchange for a security interest in those assets.

Bridge Loan is an interim loan given to a business until the longer term stage of financing can be obtained.

Buyer Credit is a medium/long term Export Finance credit where the exporter's bank or other financial institution lends to the buyer or the buyer's bank.

Critical Habitats are areas with high biodiversity value, including (i) habitat of significant importance to Critically Endangered and/or Endangered species; (ii) habitat of significant importance to endemic and/or restricted-range species; (iii) habitat supporting globally significant concentrations of migratory species and/or congregatory species; (iv) highly threatened and/or unique ecosystems; and/or (v) areas associated with key evolutionary processes.

Designated Countries are those countries deemed to have robust environmental and social governance, legislation systems and institutional capacity designed to protect their people and the natural environment. The list of Designated Countries can be found on the Equator Principles Association website.

Effective Operational Control includes both direct control (as operator or major shareholder) of the Project by the client and indirect control (e.g. where a subsidiary of the client operates the Project).

Environmental and Social Assessment (Assessment) is a process that determines the potential environmental and social risks and impacts (including labour, health, and safety) of a proposed Project in its area of influence.

Environmental and Social Assessment Documentation (Assessment Documentation) is a series of documents prepared for a Project as part of the Assessment process. The extent and detail of the documentation is commensurate with the Project's potential environmental and social risks and impacts. Examples of Assessment Documentation are: an Environmental and Social Impact Assessment (ESIA), Environmental and Social Management Plan (ESMP), or documents more limited in scale (such as an audit, risk assessment, hazard assessment and relevant project-specific environmental permits). Non-technical environmental summaries can also be used to enhance the Assessment Documentation when these are disclosed to the public as part a broader Stakeholder Engagement process.

Environmental and Social Impact Assessment (ESIA) is a comprehensive document of a Project's potential environmental and social risks and impacts. An ESIA is usually prepared for greenfield developments or large expansions with specifically identified physical elements, aspects, and facilities that are likely to generate significant environmental or social impacts. Exhibit II provides an overview of the potential environmental and social issues addressed in the ESIA.

Environmental and Social Management Plan (ESMP) summarises the client's commitments to address and mitigate risks and impacts identified as part of the Assessment, through avoidance, minimisation, and compensation/offset. This may range from a brief description of routine mitigation measures to a series of more comprehensive management plans (e.g. water management plan, waste management plan, resettlement action plan, indigenous peoples plan, emergency preparedness and response plan, decommissioning plan). The level of detail and complexity of the ESMP and the priority of the identified measures and actions will be commensurate with the Project's potential risks and impacts. The ESMP definition and characteristics are broadly similar to those of the "Management Programs" referred to in IFC Performance Standard 1.

Environmental and Social Management System (ESMS) is the overarching environmental, social, health and safety management system which may be applicable at a corporate or Project level. The system is designed to identify, assess and manage risks and impacts in respect to the Project on an ongoing basis. The system consists of manuals and related source documents, including policies, management programs and plans, procedures, requirements, performance indicators, responsibilities, training and periodic audits and inspections with respect to environmental or social issues, including Stakeholder Engagement and grievance mechanisms. It is the overriding framework by which an ESMP and/or Equator Principles AP is implemented. The term may refer to the system for the construction phase or the operational phase of the Project, or to both as the context may require.

Equator Principles Action Plan (AP) is prepared, as a result of the EPFI's due diligence process, to describe and prioritise the actions needed to address any gaps in the Assessment Documentation, ESMPs, the ESMS, or Stakeholder Engagement process documentation to bring the Project in line with applicable standards as defined in the Equator Principles. The Equator Principles AP is typically tabular in form and lists distinct actions from mitigation measures to follow-up studies or plans that complement the Assessment.

Equator Principles Association is the unincorporated association of member EPFIs whose object is the management, administration and development of the Equator Principles. The Equator Principles Association Secretariat manages the day to day running of the Equator Principles Association including the collation of EPFIs project name reporting data. For more information go to the Equator Principles Association website.

Equator Principles Reviewers are EPFI employees responsible for reviewing the environmental and social aspects of transactions subject to the Equator Principles. They may be part of a distinct Equator Principles team or members of banking, credit risk, corporate sustainability (or similar) departments/divisions tasked with applying the Equator Principles internally.

Export Finance (also known as Export Credits) an insurance, guarantee or financing arrangement which enables a foreign buyer of exported goods and/or services to defer payment over a period of time. Export credits are generally divided into short-term, medium-term (usually two to five years repayment) and long-term (usually over five years).

Financial Close is defined as the date on which all conditions precedent to initial drawing of the debt have been satisfied or waived.

Informed Consultation and Participation is an in-depth exchange of views and information and an organised and iterative consultation that leads the client to incorporate the views of Affected Communities, on issues that affect them directly (such as proposed mitigation measures, the sharing of development benefits and opportunities, and implementation issues), into their decision-making process.

Independent Environmental and Social Consultant is a qualified independent firm or consultant (not directly tied to the client) acceptable to the EPFI.

Independent Review is a review of the Assessment Documentation including the ESMPs, ESMS and Stakeholder Engagement process documentation carried out by an Independent Environmental and Social Consultant.

Known Use of Proceeds is the information provided by the client on how the borrowings will be used.

Mandated Equator Principles Financial Institution or **Mandated Financial Institution** is a financial service provider that is contracted by a client to carry out banking services for a Project or transaction.

Non-Designated Countries are those countries not found on the list of Designated Countries on the Equator Principles Association website.

Operational Control (see **Effective Operational Control**)

Other Stakeholders are those not directly affected by the Project but have an interest in it. They could include national and local authorities, neighbouring Projects, and/or non-governmental organisations.

A **Project** is a development in any sector at an identified location. It includes an expansion or upgrade of an existing operation that results in a material change in output or function. Examples of Projects that trigger the Equator Principles include, but are not limited to; a power plant, mine, oil and gas Projects, chemical plant, infrastructure development, manufacturing plant, large scale real estate development, real estate development in a Sensitive Area, or any other Project that creates significant environmental and/or social risks and impacts. In the case of Export Credit Agency supported transactions, the new commercial, infrastructure or industrial undertaking to which the export is intended will be considered the Project.

Project Finance is a method of financing in which the lender looks primarily to the revenues generated by a single Project, both as the source of repayment and as security for the exposure. This type of financing is usually for large, complex and expensive installations that might include, for example, power plants, chemical processing plants, mines, transportation infrastructure, environment, and telecommunications infrastructure. Project Finance may take the form of financing of the construction of a new capital installation, or refinancing of an existing installation, with or without improvements. In such transactions, the lender is usually paid solely or almost exclusively out of the money generated by the contracts for the Project's output, such as the electricity sold by a power plant. The client is usually a Special Purpose Entity that is not permitted to perform any function other than developing, owning, and operating the installation. The consequence is that repayment depends primarily on the Project's cash flow and on the collateral value of the Project's assets. For reference go to: "Basel Committee on Banking Supervision, International Convergence of Capital Measurement and Capital Standards ("Basel II")", November 2005. Reserve-Based Financing in extractive sectors that is non-recourse and where the proceeds are used to develop one particular reserve (e.g. an oil field or a mine) is considered to be a Project Finance transaction covered under the Equator Principles.

Project Finance Advisory Services is the provision of advice on the potential financing of a development where one of the options may be Project Finance.

Project-Related Corporate Loans are corporate loans, made to business entities (either privately, publicly, or state-owned or controlled) related to a single Project, either a new development or expansion (e.g. where there is an expanded footprint), where the Known Use of Proceeds is related to a single Project in one of the following ways:

a. The lender looks primarily to the revenues generated by the Project as the source of repayment (as in Project Finance) and where security exists in the form of a corporate or parent company guarantee;

b. Documentation for the loan indicates that the majority of the proceeds of the total loan are directed to the Project. Such documentation may include the term sheet, information memorandum, credit agreement, or other representations provided by the client into its intended use of proceeds for the loan.

It includes loans to government-owned corporations and other legal entities created by a government to undertake commercial activities on behalf of the government, but excludes loans to national, regional or local governments, governmental ministries and agencies.

Scope 1 Emissions are direct GHG emissions from the facilities owned or controlled within the physical Project boundary.

Scope 2 Emissions are indirect GHG emissions associated with the off-site production of energy used by the Project.

Sensitive Area is an area of international, national or regional importance, such as wetlands, forests with high biodiversity value, areas of archaeological or cultural significance, areas of importance for indigenous peoples or other vulnerable groups, National Parks and other protected areas identified by national or international law.

Stakeholder Engagement refers to IFC Performance Standards provisions on external communication, environmental and social information disclosure, participation, informed consultation, and grievance mechanisms. For the Equator Principles, Stakeholder Engagement also refers to the overall requirements described under Principle 5.

Supplier Credit is a medium/long term Export Finance credit that is extended by the exporter to the overseas buyer.

Exhibit II: Illustrative List of Potential Environmental and Social Issues to be Addressed in the Environmental and Social Assessment Documentation

The list below provides an overview of the issues that may be addressed in the Assessment Documentation. Note the list is for illustrative purposes only. The Assessment process of each Project may or may not identify all of the issues listed, or be relevant to every Project.

The Assessment Documentation may include, where applicable, the following:

a) assessment of the baseline environmental and social conditions
b) consideration of feasible environmentally and socially preferable alternatives
c) requirements under host country laws and regulations, applicable international treaties and agreements
d) protection and conservation of biodiversity (including endangered species and sensitive ecosystems in modified, natural and Critical Habitats) and identification of legally protected areas
e) sustainable management and use of renewable natural resources (including sustainable resource management through appropriate independent certification systems)
f) use and management of dangerous substances
g) major hazards assessment and management
h) efficient production, delivery and use of energy
i) pollution prevention and waste minimisation, pollution controls (liquid effluents and air emissions), and solid and chemical waste management
j) viability of Project operations in view of reasonably foreseeable changing weather patterns/climatic conditions, together with adaptation opportunities
k) cumulative impacts of existing Projects, the proposed Project, and anticipated future Projects
l) respect of human rights by acting with due diligence to prevent, mitigate and manage adverse human rights impacts
m) labour issues (including the four core labour standards), and occupational health and safety
n) consultation and participation of affected parties in the design, review and implementation of the Project
o) socio-economic impacts
p) impacts on Affected Communities, and disadvantaged or vulnerable groups
q) gender and disproportionate gender impacts
r) land acquisition and involuntary resettlement
s) impacts on indigenous peoples, and their unique cultural systems and values
t) protection of cultural property and heritage
u) protection of community health, safety and security (including risks, impacts and management of Project's use of security personnel)
v) fire prevention and life safety

Exhibit III: IFC Performance Standards on Environmental and Social Sustainability and the World Bank Group Environmental, Health and Safety Guidelines

The Equator Principles refer to two separate parts of the IFC Sustainability Framework as "the then applicable standards" under Principle 3.

1. The IFC Performance Standards

As of 1 January 2012, the following Performance Standards are applicable:

1 - Assessment and Management of Environmental and Social Risks and Impacts
2 - Labor and Working Conditions
3 - Resource Efficiency and Pollution Prevention
4 - Community Health, Safety and Security
5 - Land Acquisition and Involuntary Resettlement
6 - Biodiversity Conservation and Sustainable Management of Living Natural Resources
7 - Indigenous Peoples
8 - Cultural Heritage

Guidance Notes accompany each Performance Standard. EPFIs do not formally adopt the Guidance Notes however EPFIs and clients may find them useful points of reference when seeking further guidance on or interpreting the Performance Standards.

The IFC Performance Standards, Guidance Notes and Industry Specific Guidelines can be found on the IFC website.

2. The World Bank Group Environmental, Health and Safety Guidelines

The World Bank Group EHS Guidelines are technical reference documents containing examples of Good International Industry Practice (GIIP) as described in the IFC Performance Standards. They contain the performance levels and measures that are normally considered acceptable for Projects in Non-Designated Countries, as well as being achievable in new facilities at reasonable costs by existing technology. Two sets of guidelines are used:

The General Environmental, Health and Safety Guidelines

These Guidelines contain information on cross-cutting environmental, health, and safety issues potentially applicable to all industry sectors. They are divided into sections entitled: Environmental; Occupational Health and Safety; Community Health and Safety; Construction; and Decommissioning. They should be used together with the relevant Industry Sector Guideline(s).

The Industry Sector Guidelines

These Guidelines contain information on industry-specific impacts and performance indicators, plus a general description of industry activities. They are grouped as follows:

Agribusiness/Food Production

- Annual Crop Production
- Aquaculture
- Breweries
- Dairy Processing
- Fish Processing
- Food and Beverage Processing
- Mammalian Livestock Production
- Meat Processing
- Plantation Crop Production
- Poultry Processing
- Poultry Production
- Sugar Manufacturing
- Vegetable Oil Processing

Chemicals

- Coal Processing
- Large Volume Inorganic Compounds Manufacturing and Coal Tar Distillation
- Large Volume Petroleum-based Organic Chemicals Manufacturing
- Natural Gas Processing
- Nitrogenous Fertilizer Manufacturing
- Oleochemicals Manufacturing
- Pesticides Formulation, Manufacturing and Packaging
- Petroleum-based Polymers Manufacturing
- Petroleum Refining
- Pharmaceuticals and Biotechnology Manufacturing
- Phosphate Fertilizer Manufacturing

Forestry

- Board and Particle-based Products
- Forest Harvesting Operations
- Pulp and Paper Mills
- Sawmilling and Wood-based Products

General Manufacturing

- Base Metal Smelting and Refining
- Cement and Lime Manufacturing
- Ceramic Tile and Sanitary Ware Manufacturing
- Construction Materials Extraction
- Foundries
- Glass Manufacturing
- Integrated Steel Mills
- Metal, Plastic, Rubber Products Manufacturing
- Printing
- Semiconductors and Electronics Manufacturing
- Tanning and Leather Finishing
- Textiles Manufacturing

Infrastructure

- Airlines
- Airports
- Crude Oil and Petroleum Product Terminals
- Gas Distribution Systems
- Health Care Facilities
- Ports, Harbors and Terminals
- Railways
- Retail Petroleum Networks
- Shipping
- Telecommunications
- Toll Roads
- Tourism and Hospitality Development
- Waste Management Facilities
- Water and Sanitation

Mining

- Mining

Oil and Gas

- Offshore Oil and Gas Development
- Onshore Oil and Gas Development
- Liquefied Natural Gas (LNG) Facilities

Power

- Electric Power Transmission and Distribution
- Geothermal Power Generation
- Thermal Power
- Wind Energy

ABN·AMRO BNP PARIBAS BBVA CRÉDIT AGRICOLE CIB FMO Entrepreneurial Development Bank INTESA SANPAOLO NATIXIS BEYOND BANKING NIBC Rabobank SOCIETE GENERALE

May 22, 2017

The Equator Principles Association
Railview Lofts, 19c Commercial Road,
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United Kingdom
secretariat@equator-principles.com

Dear Chair,

As some of us experienced with a recent project located in a Designated Country, banks were publicly and harshly criticised for supporting a project where consultation with an indigenous community did not involve their free, prior and informed consent (FPIC). They were also criticised for not being able to intervene with the Sponsors in order to help identify a solution that was agreeable to all parties in this context.

In the present case, this was largely based on the fact that (i) local laws in relation to engagement with indigenous communities are lacking compared to best practice for FPIC such as the one developed by the World Bank & IFC and reflected in the IFC Performance Standards (IFC PS) and (ii) banks had no leverage as there was no breach with the applicable environmental & social standards being used.

In addition to the reputation damage that this has caused to the banks involved, we believe that this is likely to damage the reputation of the Equator Principles (EPs) as a “golden standard” and a common playing field for determining, assessing and managing environmental and social risks in projects.

The EPs have imposed themselves as a market standard, attracting more and more Financial Institutions and enabling them to collectively learn about this important matter. Overall, we are deeply convinced that the EPs have significantly improved the quality of the projects that we finance and we remain fully committed to the EPs and to their continuous improvements.

Whilst the EP Financial Institutions (EPFIs) and the EP Association have been quite active since the launch of the EPs in 2003 and more recently with the last version in 2013, we believe that the world has changed even more rapidly and that the initial intention of setting a golden standard and common playing field needs to be re-affirmed. It is therefore critical that we maintain the level of our initial ambition and that the EP Association demonstrates continuous progress.

As a lesson learned from the above captioned project, we believe that a significant improvement to the EPs is now needed to avoid similar situations in the future and we would like to put forward two important changes:

- Requiring that projects in Designated Countries (as defined in the EPs) are developed to comply with the same environmental and social standards as in non-Designated Countries, i.e. the IFC PS, in addition to applicable local standards.

  This is crucial with respect to critical issues such as FPIC and biodiversity conservation. Moreover, this would address concerns that local laws in Designated Countries are not necessarily as stringent as the IFC PS in all respects. We request that this proposal be discussed in the coming months in order to reach a decision in a timely manner.

- Propose amendments to the EP framework to facilitate the resolution of issues resulting from a potential breach of the applicable E&S standards that may lead to a significant damage to the environment and / or communities. We request that a working group be put in place as soon as possible to review this request and make proposals to the EP Association on how to implement them.

The undersigned would like to call on all EPFIs to support this ambition and work collectively to achieve significant progress on these two important aspects. In this spirit, the undersigned EPFIs would be happy to participate in a working group(s) to work towards achieving these goals.

We will be grateful to the Steering Committee to bring the subject forward to the EPFIs community and assist us in fostering discussions..

Best Regards

For and on behalf of,

ABN AMRO

Claire Gillig-Brouwer
EP Primary Contact

BNP PARIBAS

Patrick Bader
EP Primary Contact

BBVA

Juan A. Casals Ovalle
EP Primary Contact

Credit Agricole CIB

Eric Cochard
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Emilie Goodall
Manager, Development Impact and Sustainability

Intesa San Paolo

Antonella Bernasconi
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Robin Willing
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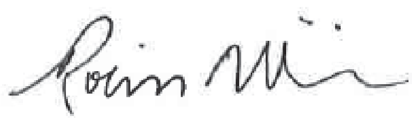
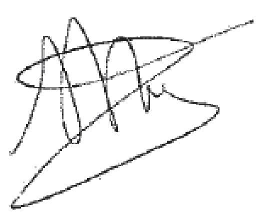


Rabobank

Bas Rüter
Director of Sustainability

Société Générale

Sylvie Préa
Director of Corporate Social Responsibility



An Update to the 2017 Investor Statement to Banks Financing the Dakota Access Pipeline

Investor Statement to the Equator Principles Association

The undersigned investors, with over $2.67 trillion total assets under management or advisement, are writing to the Equator Principles Association (EPA). Many of us signed an earlier investor statement to banks financing the Dakota Access Pipeline (DAPL). We remain concerned about the construction of DAPL despite objections from the Standing Rock Sioux Tribe (SRST), as well as other communities and landowners along its route.

Thirteen of the seventeen banks that participated in the original project loan to DAPL are signatories to the Equator Principles "EPs", an environmental and social risk management framework utilized by ninety-one banks in thirty-seven countries. We are writing to request that measures be taken by the EPA to maintain the credibility of the EPs and ensure banks have the tools necessary to respond to situations like DAPL in the future.

Since the earlier investor statement to banks financing DAPL, a federal court ruled partially in favor of the SRST, determining that the US Army Corps of Engineers approved DAPL without adequately considering the impacts of an oil spill on hunting and fishing rights. The UN Special Rapporteur on the Rights of Indigenous Peoples' country visit to the US found that the SRST was "denied access to information and excluded from consultations at the planning stage of the project" and that the environmental assessment for DAPL "dismissed the risks to the reservation and failed to mention any of the other tribes that traditionally used the territory." The Foley Hoag report *Good Practice Guidance for Managing the Social Impacts of Oil Pipelines in the United States*—which was commissioned by banks financing DAPL—affirms that there may be inconsistencies between US federal law and international industry good practice. Indigenous Peoples have flagged concerns about the capacity for in-country laws to adequately protect their rights in relation to other proposed projects financed by EP's signatory banks, such as the Keystone XL Pipeline and the Trans Mountain Pipeline.

In the wake of these developments, we reiterate our stance that banks must take measures to protect their reputation and consumer base, as well as communities impacted by their lending. We recognize that several of DAPL's lenders are already considering various actions to enhance their due diligence for projects that impact Indigenous Peoples. However, we believe that DAPL demonstrates need for industrywide changes, and recommend that measures be taken to strengthen the ability of the EPs to identify, manage, and mitigate social risks across the banking sector.

Our first recommendation is in relation to the "Designated Country Rule" of the EPA. Designated Countries are countries "deemed to have robust environmental and social governance, legislation systems, and institutional capacity designed to protect their people and the natural environment." The Designated Country Rule states that projects in Designated Countries may be subject to an assessment process that relies on in-country laws as an acceptable substitute for the IFC Performance Standards. We request the EPA to align the assessment process for all countries with the IFC Performance Standards, and echo requests from ten EPs signatory banks to ensure that projects in Designated Countries are developed to comply with the same environmental and social standards as in non-Designated Countries, in addition to applicable local standards. We are aware that the EPA has formed a "Designated Countries Working Group" to reexamine the distinction between Designated and non-Designated Countries.

Our second recommendation seeks to address the limited ability of banks to respond to the SRST's request for a reroute of DAPL that avoided their treaty territory. This demonstrates the need for better alignment of the EPs with the terms and conditions of the loans that EPs signatory banks employ to finance projects. We request the Equator Principles Association to establish a mechanism through which EPs signatory banks can facilitate the resolution of issues resulting from possible breaches of the applicable environmental and social standards. This request has also been put forth by ten EPs signatory banks, in a statement to the EPA dated May 22, 2017.

Our third recommendation is in relation to reporting on human rights and Indigenous Peoples. Principle 10 of the EPs obligates EPs signatory banks "to report publicly, at least annually, on transactions that were subject to the EPs and have reached Financial Close; and on its EPs implementation processes and experience, taking in account appropriate confidentiality considerations." In order to protect your shareholders from risks, and meet the expectations associated with the UN Guiding Principles on Business and Human Rights, we request all EPs signatory banks to report specifically on their due diligence processes regarding human rights and Indigenous Peoples for EPs transactions.

In conclusion, we reiterate our support for the EPA's efforts to improve the quality of projects financed by its members and encourage the EPA to adopt our recommendations. Doing so would reinforce the EPs' position as industry best practice for environmental and social risk management, mitigate risk to EPs signatory banks, and strengthen protections for the rights of Indigenous Peoples and other local communities in countries around the world.

Date: October 23, 2017

See attached list of signatories as of October 23, 2017

2017 Investor Statement to the Equator Principles Association
Signatories as of October 23, 2017

Geeta Aiyer
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Storebrand Asset Management

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Raymond James Investment Counsel Ltd.

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2017 Investor Statement to the Equator Principles Association
Signatories as of October 23, 2017

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Echo Foundation

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Executive Director
Evangelical Lutheran Foundation of Eastern Canada

N. Kurt Barnes
Treasurer & CFO
The Episcopal Church

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Manager of Advocacy and Research
Everence and the Praxis Mutual Funds

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Jeffery W. Perkins
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Treasurer/CFO
FSPA

Fran Teplitz
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2017 Investor Statement to the Equator Principles Association
Signatories as of October 23, 2017

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Oneida Nation – Trust Enrollment Committee

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Committee on Mission Responsibility Through
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Director of Justice, Peace and Reconciliation
Priests of the Sacred Heart, U.S. Province

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Sisters of Bon Secours USA

Sr. Barbara Aires
Coordinator of Corporate Responsibility
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Sisters of Charity of Saint Elizabeth

2017 Investor Statement to the Equator Principles Association
Signatories as of October 23, 2017

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Sisters of St. Dominic of Blauvelt, New York

Sr. Patricia A. Daly, OP
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Sisters of St. Joseph of Springfield

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Sisters of the Holy Names

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Community Treasurer
Sisters of the Humility of Mary

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Stardust

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Managing Director
Stephen Whipp Financial
Leede Jones Gable Inc.

Terrence Meck
President
Threshold Foundation

Tom Bennigson
President
Tikva Grassroots Empowerment Fund

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Senior Vice President
Trillium Asset Management LLC

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The Pension Boards - UCC, Inc.

Katie McCloskey
Director, Social Responsibility
United Church Funds

Erik Mathiesen
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United Church of Canada

Marcus Robertson
Pension Board Chair
Pension Plan of The United Church of Canada

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General Secretary
General Board of Global Ministries
The United Methodist Church

Harriett Olson
Chief Executive Officer/General Secretary
United Methodist Women

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Veris Wealth Partners

2017 Investor Statement to the Equator Principles Association
Signatories as of October 23, 2017

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Investment Strategist
Wespath Investment Management

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Youville Provident Fund

Sonia Kowal
President
Zevin Asset Management

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STANDING ROCK SIOUX TRIBE, **Plaintiff,** **and** **CHEYENNE RIVER SIOUX TRIBE,** **Plaintiff-Intervenor,** **v.** **U.S. ARMY CORPS OF ENGINEERS,** **Defendant,** **and** **DAKOTA ACCESS, LLC,** **Defendant-Intervenor and Cross-Claimant.**	**Civil Action No. 16-1534 (JEB) (and Consolidated Case Nos. 16-1769 and 16-267)**

MEMORANDUM OPINION

Two months ago, this Court determined that oil could continue to flow through the Dakota Access Pipeline while the U.S. Army Corps of Engineers conducted further environmental analyses. See Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers (Standing Rock IV), 2017 WL 4564714 (D.D.C. Oct. 11, 2017). Although the prior Opinion declined to vacate the agency's easement approval, it left open the question of whether to impose any conditions during the remand period. Plaintiffs, the Standing Rock and Cheyenne River

Sioux Tribes, have asked for a series of interim measures to monitor the ongoing operation of the pipeline. Defendants oppose such conditions, arguing that the Tribes have not demonstrated a need for injunctive relief and that the proposed measures are unnecessary during remand.

As a threshold matter, the Court concludes that the interim conditions are not a request for injunctive relief; they are instead a means by which the Court can ensure that it receives up-to-date and necessary information about the operation of the pipeline and the facts on the ground. It next determines that the requested measures, each of which is tailored to keeping the Court abreast of the conditions at Lake Oahe pending further Corps analysis, are reasonable and appropriate.

I. Background

As explained in prior Opinions, the parties here are engaged in a protracted dispute over the placement of the Dakota Access Pipeline (DAPL) under Lake Oahe in North Dakota. See, e.g., Standing Rock IV, 2017 WL 4564714, at *1-3. The Lake is a federally regulated body of water that borders the Tribes' reservations, and it is considered sacred within their spiritual practices. Id.

In their most recent challenge to the project, Plaintiffs alleged that the Corps had erred in its analysis of the environmental impact of the pipeline crossing, in violation of the National Environmental Policy Act. See Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers (Standing Rock III), 255 F. Supp. 3d 101 (D.D.C. June 14, 2017). The Court agreed in part and remanded the case to the Corps for further analysis. Id. at 140. In a subsequent Opinion, issued on October 11, 2017, the Court examined whether the NEPA violations warranted vacatur of the agency's decisions – and thus a stoppage in the oil flow – during remand. See Standing Rock IV, 2017 WL 4564714. Finding a "significant likelihood" that the Corps could substantiate its prior conclusions, the Court answered that question in the negative. Id. at *8. In denying such relief, however, it left open the possibility of imposing other, interim conditions during remand. Id. at *12. It ordered further briefing on the issue from both sides, which is now complete.

II. Analysis

A. Authority to Issue Conditions

The Court turns first to the matter of its authority to impose conditions during remand. As the Tribes correctly note, this question has already been decided by the prior Opinion, in which the Court found that it possessed jurisdiction to order interim remedies other than vacatur. Id. at *12 (rejecting Defendants' argument that Court lacks jurisdiction to enter interim relief). Although the Court therefore considers this matter largely settled, Defendants nonetheless continue to contend that the proposed conditions are beyond the scope of the Court's power. This is not so.

The fundamental flaw in Defendants' argument is in how they characterize the relief Plaintiffs seek. Defendants assert that the Tribes are, in effect, asking for an injunction. According to the Corps, "Plaintiffs' request for 'alternative measures' is . . . nothing more than a request for additional injunctive relief." ECF 287 (Corps Brief) at 1-2. Asserting that the Tribes fail to meet the test for such a remedy, the Corps contends that Plaintiffs are not entitled to interim relief. Id.

Yet the conditions sought do not constitute injunctive relief. They do not affect Defendants' ongoing environmental analysis, nor do they constrain the outcome of the remand process. Rather, they are largely a means of providing the Court with relevant information during this period. Each of the interim conditions is tailored to address the Court's ongoing concern with the risk of a spill at Lake Oahe – a hazard that the previous Opinion described as "at the center of this Court's prior" decision to remand the matter to the Corps. See Standing

Rock IV, 2017 WL 4564714, at *10. Such information-gathering measures are within the Court's managerial discretion over this pending case. See also West Virginia v. EPA, Order, No. 15-1363 (D.C. Cir. 2017) (ordering EPA to file status reports at 30-day intervals while case held in abeyance).

Because the interim conditions here do not affect the remand process, Defendants' reliance on Monsanto Co. v. Geertson Seed Farms, 561 U.S. 139 (2010), is misplaced. The Court there held that the district court had exceeded its authority when, after vacating the Animal and Plant Health Inspection Service's decision to completely deregulate a genetically engineered crop, it additionally entered an injunction preventing the agency from partially deregulating the crop during the remand period. Id. at 156, 158-59. Such an injunction, the Court concluded, interfered with the agency's authority "to decide whether and to what extent it would pursue a partial deregulation" and thus impermissibly "pre-empt[ed] the very procedure by which the agency could determine . . . that a limited deregulation would not pose any appreciable risk of environmental harm." Id. at 159, 164. The holding in Monsanto thus resolved an issue unconnected with the facts of this case – whether a district court may impose constraints on an agency's authority and decisionmaking during remand. The interim measures proposed here do not have any such effect.

Other cases addressing the scope of a court's supervision during remand are similarly inapposite. These decisions all concern the imposition of injunctive relief relating to the relevant agency's analysis or discretion on remand. See Bennett v. Donovan, 703 F.3d 582, 588-89 (D.C. Cir. 2013) (noting that court would not direct agency on remand "to take [a] precise series of steps" with respect to plaintiffs' mortgage, including "accept[ing] assignment of the mortgage, pay[ing] off the balance . . . and then declin[ing] to foreclose"); Palisades Gen. Hosp. Inc. v.

Leavitt, 426 F.3d 400, 403 (D.C. Cir. 2005) (stating that district court lacked authority to "order specific relief" after vacating agency decision); Berge v. United States, 949 F. Supp. 2d 36, 47 (D.D.C. 2013) (noting no district court jurisdiction to "order specific relief that deprives an agency of the ability to reconsider the matter in light of the Court's decision").

Yet here, as explained in more detail below, the conditions are not constraints on the Corps' analysis or a grant of "specific relief" to the Tribes. They do not concern the scope of the remand, nor do they affect the agency's authority over the pipeline. They are instead means by which the Court can gather information about the risks posed by the pipeline pending remand and can ensure that the status quo is preserved for both sides. As discussed in the prior Opinion, such an interim remedy clearly falls within the Court's general equitable powers.

Recent events have made clear, moreover, that there is a pressing need for such ongoing monitoring. Earlier this month, the Keystone Pipeline leaked 210,000 gallons of oil in Marshall County, South Dakota. See Mitch Smith and Julie Bosman, Keystone Pipeline Leaks 210,000 Gallons of Oil in South Dakota, N.Y. TIMES (Nov. 16, 2017), https://www.nytimes.com/2017/11/16 /us/keystone-pipeline-leaks-south-dakota.html. The spill occurred near the boundaries of the Lake Traverse Reservation, home of the Sisseton Wahpeton Oyate Tribe, thus highlighting the potential impact of pipeline incidents on tribal lands. Id. Although the Court is not suggesting that a similar leak is imminent at Lake Oahe, the fact remains that there is an inherent risk with any pipeline. As stated in the prior Opinion, "[T]here is no doubt that allowing oil to flow through the pipeline during remand risks the potentially disruptive effect about which the Tribes are most concerned – a spill under Lake Oahe." Standing Rock IV, 2017 WL 4564714, at *10. Such incidents, the Court noted, "have the potential to wreak havoc on nearby communities and ecosystems." Id. at *11. In light of these concerns, it is in the Court's interests to stay abreast of any relevant changes during the remand period and to order the parties to provide up-to-date information about the pipeline's operation. Such reporting will allow the Court to ensure that remand without vacatur remains the appropriate remedy and to monitor any factual developments in this ongoing case.

The Corps is thus incorrect that the interim conditions are "unwarranted" and "unlikely to address Plaintiffs' stated concerns with the operation of the pipeline." Corps Brief at 4. Indeed, Defendants' assertion that the Tribes' "rights, resources, and land are fully protected by the existing easement" presupposes that the status quo will be maintained during the remand process. Id. at 5. Yet without measures to ensure that Defendants share information about ongoing operations, there is no clear way for the Court, the parties, or the public to evaluate the efficacy of the extant safety measures.

B. Interim Conditions

Plaintiffs request three specific conditions during the remand period: (1) the finalization and implementation of oil-spill response plans at Lake Oahe; (2) completion of a third-party compliance audit; and (3) public reporting of information regarding pipeline operations. See ECF 272 (Tribes' Brief Regarding Remedy) at 36-39. The Court agrees that each of these measures is appropriately tailored to monitoring the status of the pipeline during remand.

As to the first, the Corps contends that the Tribes and Dakota Access "either have resolved, or are in the process of resolving, the Tribe's request" and that the relief sought is therefore not "necessary because it appears that the parties have already engaged in the requested coordination." Corps Brief at 6. Dakota Access similarly states that it is "already coordinating" with the Tribes' emergency-management personnel. See ECF 288 (Dakota Access Brief) at 4. The Court, of course, encourages the parties to collaborate in efforts to resolve any pipeline-related dispute. Yet, in light of the case's history of contested versions of discussions between Plaintiffs and Defendants, it will not rest on such representations. Instead, the Court will order that the Corps, Dakota Access, and the Tribes coordinate to finalize spill response plans at Lake Oahe, and that the parties file such plans with the Court by April 1, 2018. Such a condition is directly related to the risk of a spill during remand, and it is directed to keeping the Court informed as to all parties' efforts to preserve the status quo pending the Corps' further environmental analysis.

The Court will additionally impose the second requested condition – namely, the completion of a third-party compliance audit. In contesting this measure, Dakota Access relies heavily on the ongoing authority of the Pipeline and Hazardous Materials Safety Administration to ensure DAPL's compliance with federal laws and regulations. See DA Brief at 5-6. The Tribes note, however, that PHMSA itself recognized the potential benefit of having an independent, third-party review. See Tribes Brief at 10. Defendants' assertion that such a process would be duplicative of PHMSA oversight is therefore unavailing. As to the Tribes' involvement in the process, the Corps asserts that Plaintiffs are asking for their "own experts [to] actually participate in the audit," Corps Brief at 6, and Dakota Access contends that the Tribes are seeking to "insert[]" themselves into the process. See DA Brief at 6. Yet the Tribes in fact request only that they be permitted to participate in the selection of the auditor and have the opportunity to share their relevant data during the audit process. See Tribes Brief at 10. This seems reasonable. The Court will therefore order that Dakota Access select an independent, third-party auditor in consultation with the Tribes. Because these conditions are imposed in order to keep the Court informed of the circumstances at Lake Oahe pending remand, it will require that the results of this audit process be filed with the Court by April 1, 2018.

Finally, the Court will require that Dakota Access file bi-monthly reports regarding the status of the pipeline during remand, beginning at the end of this month. With respect to this condition, the Corps contends that such reporting is "unnecessary" and "unlikely to lead to any meaningful differences in the safety of the pipeline." Corps Brief at 7. Yet it never explains how additional information and transparency during the remand process would not enhance public safety and the Court's understanding of the facts on the ground. In light of Dakota Access's agreement to "voluntarily" report on many of the issues raised by the Tribes, there is similarly no concern that this condition will be unduly burdensome for the company. See DA Brief at 7. The Court will therefore order that Dakota Access file bi-monthly reports of any repairs or incidents occurring at the segment of the pipeline crossing Lake Oahe.

III. Conclusion

The Court, the parties, and the public all have an interest in ensuring that the status quo at Lake Oahe is preserved pending remand. In order to obtain the information necessary to monitor the conditions in North Dakota, and to mitigate the risk of any potential spill, the Court will thus impose a series of interim measures. A separate Order consistent with this Opinion will be issued this day.

/s/ James E. Boasberg
JAMES E. BOASBERG
United States District Judge

Date: December 4, 2017

22-FEB-2017

BayernLB withdraws from follow-on financing for Dakota Access Pipeline (DAPL)

BayernLB has been closely and critically monitoring the current debate concerning the route of the DAPL and the protests at the construction site. Furthermore, the Bank continues to engage in a constructive dialogue with German and international environmental and human rights organisations. As a member of the syndicate financing the pipeline, it has been using its influence wherever possible to achieve an outcome to the talks that is satisfactory to all parties involved. Independently of this, BayernLB has decided to exit the financing at the earliest date possible under the loan agreement and to not participate in the upcoming next round of financing.

Nachhaltigkeit

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BBVA DAPL Statement

STATEMENT

BBVA is a conscientious bank that's committed to doing right, and it evaluates a project's social and environmental risks before making financing decisions. A global corporate citizen present in dozens of countries, we are signers of the UN Principles on Business and Human Rights, the UN Sustainable Development Goals and a member of the Thun Group on Human Rights. BBVA also was an early adoptee, in 2004, of the Equator Principles, becoming the first Spanish bank to sign on. The Equator Principles are a set of standards for guiding project finance decisions, and are considered the gold standard in social and environmental risk management in the financial sector.

No matter the project, BBVA observes environmental and social standards, including those listed in the Equator Principles. The bank also conducts a detailed evaluation before making financial decisions, carefully screening for compliance with applicable laws and regulations. The Dakota Access Pipeline project finance transaction was evaluated under these guidelines. BBVA is one of 17 banks whose loans financed the project, and we have fulfilled our funding obligations under the agreements that govern our lending commitment of $120 million, or approximately 5% of the debt component of the project's financing.

The BBVA Group provides financing solutions for many segments of the energy industry, including wind and solar, with a lending strategy that looks to finance companies that are exploring new, efficient and safe ways to provide the energy on which the world and its economies rely. It is also committed to contributing to the economic development of the communities and countries where it is present through its financing activities.

BBVA, alongside the other lenders involved in the project, proactively commissioned independent human rights consultant Foley Hoag to review matters related to the permitting process and consultations with the Native-American tribes involved. The bank met with the Standing Rock Sioux in March 2017 to hear the tribe's concerns directly in what will be an ongoing, respectful process. BBVA will also follow up with our client to discuss the matter in the coming weeks.

BBVA looks forward to doing our part to help resolve this matter in a respectful way that encourages ongoing dialogue.

BNP Paribas exits Dakota Access Pipeline

April 05, 2017 11:42 ET | **Source:** BNP Paribas Securities Corp.

NEW YORK, April 05, 2017 (GLOBE NEWSWIRE) -- BNP Paribas announces that it has sold its USD 120m share in the USD2.5bn Dakota Access Pipeline loan. The decision to divest the loan was made following an extended and comprehensive review of the project including consultation with all the relevant stakeholders.

The sale of our stake signals the importance of full and detailed consultation on projects that impact large numbers of stakeholders.

Following the sale of the loan, BNP Paribas no longer has financial exposure to the Dakota Access Pipeline.

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BNP Paribas Americas on Twitter - @BNPPAmericas

About BNP Paribas

BNP Paribas is a leading bank in Europe with an international reach. It has a presence in 74 countries, with more than 190,000 employees, including more than 146,000 in Europe. The Group has key positions in its three main activities: Domestic Markets and International Financial Services (whose retail-banking networks and financial services are covered by Retail Banking & Services) and Corporate & Institutional Banking, which serves two client franchises: corporate clients and institutional investors. The Group helps all its clients (individuals, community associations, entrepreneurs, SMEs, corporates and institutional clients) to realise their projects through solutions spanning financing, investment, savings and protection insurance. In Europe, the Group has four domestic markets (Belgium, France, Italy and Luxembourg) and BNP Paribas Personal Finance is the leader in consumer lending. BNP Paribas is rolling out its integrated retail-banking model in Mediterranean countries, in Turkey, in Eastern Europe and a large network in the western part of the United States. In its Corporate & Institutional Banking and International Financial Services activities, BNP Paribas also enjoys top positions in Europe, a strong presence in the Americas as well as a solid and fast-growing business in Asia-Pacific.

Citi's Letter to Investors Regarding the Dakota Access Pipeline

MARCH 07, 2017 10:15 AM

The following was sent in response to a letter from investors regarding the Dakota Access Pipeline.

We appreciate the opportunity to engage with our investors on important issues such as this one. We would like to provide you with some background on our due diligence practices, engagement activities, and how we have sought to use our leverage in this difficult situation.

The DAPL project was reviewed under our Environmental and Social Risk Management (ESRM) Policy and the Equator Principles and was rated a Category A for high environmental and social risk. During the due diligence phase, we reviewed the Environmental Assessment report and engaged an independent consultant to review the permitting and approval process to confirm compliance with U.S. law. As part of this review, we considered the Lake Oahe/Missouri River crossing, and understood that the project sponsors – Energy Transfer Partners and Sunoco Logistics – proposed using horizontal directional drilling to go more than 95 ft. under the river crossing to minimize impacts and risks, in line with industry best practice for water crossings. Following our comprehensive review, we determined that the project met our ESRM Policy, and the transaction was closed with a total of 17 banks participating. However, shortly after close, controversy surrounding the project grew and continued to escalate last fall.

As the situation deteriorated, we met with a number of stakeholders from the human rights, academic, investor and non-governmental organization communities, as well as the Standing Rock Sioux Tribe. These engagements were intended to understand the different perspectives and how we might use our leverage to help. In an instance like this when a transaction is already closed, we have limited leverage. Nevertheless, we engaged directly with our clients to understand the situation from their point of view, share our concerns, and advocate for steps towards a peaceful, constructive resolution that prioritized the safety of both the protestors and pipeline workers. We also posted a series of public statements, including one that voiced our support for the efforts of the federal government last fall to work directly with Native American tribes to improve the consultation process.

We have helped to engage an independent human rights expert, Foley Hoag LLP, to advise the lenders involved in the project and to evaluate legal matters related to permitting as well as the project sponsors' policies and procedures in the areas of community engagement (including engagement with Native Americans), evaluation of cultural heritage, and security management. This review is an effort to understand the many complexities of the DAPL situation and will also result in recommendations for companies to consider in the future. Citi, along with TD Bank, is playing a leadership role in coordinating the study and the bank group.

We understand that some of the investor signatories are also investors in the DAPL project sponsors, and that they have chosen to remain invested so that they can engage directly with the companies. We share their belief in the value of engagement. We have met with the Standing Rock Sioux Tribe in person at our headquarters in New York City to hear their concerns and learn more about social and economic issues on the Standing Rock Reservation. Last week, we also joined a call between the tribe and a broad group of banks that have financed either the project or the sponsors; the call was organized so that the tribe's message and concerns could be shared more broadly. While a reroute of DAPL does not appear to be feasible at this late stage of construction, we have remained committed to engaging with and learning from the tribe and other stakeholders and experts, and voicing our concern for maintaining the safety of all involved.

Separately, Citi has also hired a third-party social consultant – Monkey Forest Consulting – to advise us on strengthening our internal due diligence on social risk, including on issues related to Indigenous Peoples in the United States. We expect this to help inform an enhanced due diligence process to be developed during 2017.

View Citi's Statement on the Dakota Access Pipeline (Originally Posted November 8, 2016, updated November 30, 2016)

View Citi's Letter to BankTrack (December 23, 2016)

View Citi's Letter to Stakeholders on the Dakota Access Pipeline (January 30, 2017)

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DETAILS ON THE DAKOTA ACCESS PIPELINE PROJECT IN THE UNITED STATES

Crédit Agricole CIB is one of the 17 banks that participated to the financing of the Dakota Access Pipeline (DAPL) project, contributing USD 120 million to the total USD 2.5 billion loan. Crédit Agricole has supported and still supports any recommendation that would resolve the dispute with the Sioux tribe of Standing Rock.

This project had obtained all the necessary permits from the US government, and an independent legal counsel has confirmed that the project complies with all the prevailing laws and regulations, making the signature and disbursement of the loan possible.

Subsequent to the signature of the loan, the participating banks were questioned by civil society, and in particular the Standing Rock Sioux tribe, concerning the lack of consent from indigenous communities, these last requesting a change to the route of the pipeline near the Indian reservation.

Although this request was made at a time when the banks no longer had the power to impose new conditions on the project, Crédit Agricole gave the matter its utmost attention. We have spoken directly on several occasions with representatives from the Standing Rock tribe and civil society, and we have worked with the borrowers with a view to finding an amicable solution. In liaison with the other participating banks, Crédit Agricole CIB succeeded in appointing an independent expert, Foley Hoag LLP, tasked with proposing avenues for improvement to the borrowers.

In parallel, in December 2016 the US government initiated a new phase of public consultation and a review of the disputed section of the pipeline, opening the way to a possible change to the route.

In February 2017, after the US presidential election, the government announced that this phase was completed and the permits were confirmed on the basis of the initial route. The Tribal Council of the Standing Rock Sioux reiterated its concerns and its request to review a change in route to the 17 banks.
Crédit Agricole would like to point out that, failing a decision by the US judiciary to the contrary, at this point it has no way of voicing new requests or conditions relative to the borrowers. It is nevertheless mindful of the Tribal Council's concerns and demands, and has committed to:

- supporting any recommendation issued by Foley Hoag LLP that could lead to a satisfactory solution for the parties
- taking no decisions, in strict compliance with the existing contractual commitments, that could work against the review of a route change
- not increasing its contributions relative to the borrowers and more broadly Bakken Holdings Company, which is responsible for the development of the DAPL project, and its affiliates for as long as a satisfactory solution to the dispute has not been found
- calling in all circumstances for a peaceful resolution of the dispute and the respect of the rights of indigenous peoples

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Moreover, in order to reduce the risk of facing similar situations in the future, Crédit Agricole CIB made two requests to the Equator Principles Association concerning the obligation to obtain, in all countries, free prior and informed consent and informed of impacted communities, and the creation of a grievance support structure. We have already obtained the support of some other major banks to obtain this improvement of the Equator Principles.

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ING

ING has sold its stake in Dakota Access pipeline loan

2 min read Listen

21 March 2017

ING has reached an agreement for the sale of its loan to the Dakota Access pipeline. The sale follows a constructive dialogue between ING and representatives from the Standing Rock Sioux Tribe and has the full support of the Tribe.

ING's head of Business Ethics Arnaud Cohen Stuart (left) and Chad Harrison from the Standing Rock Sioux Tribe shortly after their meeting in New York on 10 February.

In our meeting with the Standing Rock Sioux Tribe on 10 February, we discussed the Tribe's concern regarding the pipeline's proposed routing. The Tribe made its belief clear that its interests and position as a sovereign nation weren't properly recognised in the process by the government. Both ING and the Tribe acknowledged the general importance of respectful dialogue with groups potentially affected by large infrastructure projects.

In the meeting, we also shared with the Tribe our willingness to either continue trying to positively influence the course of the project, or to distance ourselves by selling our stake in the loan.

In response, the Standing Rock Sioux Tribe indicated it would appreciate ING selling its loan in the project, considering that there is less room for lenders to positively influence the project now that construction has resumed, and because it would be a valuable message supporting its call for respectful dialogue.

Today, ING has signed an agreement to sell the loan. Under the terms of the agreement with the buyer ING retains a potential risk in case of non-payment under the loan. The buyer of the loan supports the importance of a respectful dialogue with the Tribe and other affected groups. ING is grateful to the buyer for playing an important role in enabling a solution that allows ING to not to breach its contractual obligations under the loan while at the same time delivering a valuable message in support of the Tribe. The sale is expected to close in the coming days.

Related link

ING and the Dakota Access pipeline FAQ

DNB FEED

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DNB HAS SOLD ITS PART OF DAKOTA ACCESS PIPELINE LOAN

Publisert av: Cecilie Skjennald - 26. mars 2017

Since November 2016, DNB has reviewed various options for its involvement in the project financing of the Dakota Access Pipeline. The bank has now entered into an agreement to sell its share of the loan.

"By selling our stake, we wish to signal how important it is that the affected indigenous population is involved and that their opinions are heard in these types of projects. Although there have been attempts at consultation by the project parties, the outcome of the process suggests that these have been inadequate,» says Harald Serck-Hanssen, group executive vice president and head of Large Corporates and International in DNB.

DNB Asset Management chose to sell their mutual fund investments in the companies behind the pipeline in November 2016. Several other Norwegian financial institutions followed suit and have since also sold their investments. At that time, DNB communicated that a sale of the project financing was one of the options under review, but that such a sale would take longer than the sale of shareholdings. In the meantime, DNB has used its position as a lender to try to influence the process, call for a lower level of conflict and took the initiative to carry out an independent investigation of how indigenous people's rights are being safeguarded.

"During the process, we have met several interest groups and listened to their suggestions. We have met, among others, representatives from the Standing Rock Sioux Tribe. We have also engaged in an

DNB FEED

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or uilding the pipeline. Many of our customers have contacted us and expressed what they expect from us as a Norwegian bank. In our evaluations, we have taken account of al Serck-Hanssen.

Following the sale of the loan, DNB no longer has any direct financial exposure to the Dakota Access Pipeline.

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Intesa Sanpaolo and the Dakota Access Pipeline Financing

The permits inherent to the Dakota Access Pipeline being consistent and effective, Intesa Sanpaolo has participated in the project financing with its pertaining final take, of a limited size (USD 120 million).

Intesa Sanpaolo confirms its commitment to take care with the utmost attention of the social and environmental issues in adherence to the principles expressed in its Code of Ethics and in line with the adhesion to international standards in social and environmental fields, first and foremost the Equator Principles, which have been met by the project, and the UN Global Compact.

On May the 9th 2017, a public summary was disclosed from the report prepared by the independent human rights expert (Foley Hoag) appointed by a group of lenders, including Intesa Sanpaolo, to review the policies and procedures adopted by the project sponsors in the areas of security, human rights, community engagement and cultural heritage.

The full report is confidential, but the lending banks requested that the expert share certain general findings as well as the guidance about international industry good practice. This guidance may help companies building future pipelines in the U.S. incorporate international industry good practice, and may assist banks when they evaluate those projects.

May 2017

MIZUHO

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STATEMENT

Mizuho's Statement on the Dakota Access Pipeline Project

December 16, 2016 Statement

[Update: February 2, 2017]

Following President Trump's executive memorandum and the directive from the Secretary of the Army, Mizuho Americas continues to review the situation closely as events unfold. We remain deeply committed to upholding our social responsibilities and continue to encourage all parties to work in a collaborative, safe and respectful dialogue.

December 16, 2016

Mizuho Americas has been actively monitoring the Dakota Access Pipeline (DAPL) project, including the recent decision to halt construction near the reservation of the Standing Rock Sioux Tribe. The Army Corps of Engineers has denied the final easement required for the $3.8 billion project to cross under Lake Oahe in North Dakota and will conduct an Environmental Impact Statement to further examine potential impacts and explore alternative routes.

As the Army Corps of Engineers continues to look for alternative routes for the pipeline, Mizuho, as a lender, is simultaneously seeking guidance from and collaborating with an independent human rights expert to review compliance and legal engagements relating to tribal government, community engagement, security, and environmental issues relating to DAPL.

Mizuho is deeply committed to upholding our social responsibilities and public mission as a financial institution. Mizuho encourages all parties involved to continue to communicate in a collaborative, safe and respectful dialogue.

Société Générale Statement

The Dakota Access Pipeline project in the USA

22/05/2017 - Société Générale is one of the 17 banks initially involved in the financing of the Dakota Access Pipeline (DAPL) project located in the United States of America.

In the framework of its business activities, Société Générale only supports projects that are in compliance with all the rules and regulations in the jurisdiction in which it operates and in accordance with the Group's Environmental and Social General Guidelines and the Equator Principles adopted by 90 financial institutions for determining, assessing and managing environmental and social risk. In all of its business activities, Société Générale condemns violence and violation of human rights.

The decision to support the DAPL project was made on the basis of a comprehensive due diligence process that included independent reviews from various counsels, and that legal, technical, environmental, social and regulatory matters were and continue to be in compliance with all applicable laws and regulations. In light of protests following the project financing, Société Générale carried out discussions with a representative of the Standing Rock Sioux Tribe to better understand their concerns. Alongside the other lending banks, we also supported the commissioning of an independent human rights expert, Foley Hoag LLP, to conduct a further social impact study on the project, advise the lenders in their understanding of the complexities of the DAPL situation and provide recommendations to sponsors to consider in the future.

A summary of these recommendations was made public. Société Générale will take them into account in the future when reviewing projects with similar issues.

In February 2017, the US Administration confirmed the project's satisfaction of all regulatory requirements and granted the final easement to the project. The Standing Rock Sioux Tribe has since exercised the recourse afforded to it by the US judicial system. We continue to closely monitor the situation and urge all parties to reach a peaceful resolution.

In line with its business practices, Société Générale explores ways to positively influence the projects it is involved in and help the industry evolve. Our bank believes it is important that lessons learned by all stakeholders in the Dakota Access Pipeline are considered in projects and project financings going forward.

As a result, Société Générale has teamed up with other members of the Equator Principles Association to ask the association to rapidly adapt the current risk assessment framework with regard to the rights of indigenous peoples, in line with international best practices.

22/02/2017 - Société Générale is one of several banks involved in the financing of the Dakota Access Pipeline project located in the United States of America.

In the framework of its business activities, Société Générale only supports projects that are in compliance with all the rules and regulations in the jurisdiction in which it operates, and in accordance with the Group's Environmental and Social General Guidelines and with the Equator Principles adopted by financial institutions for determining, assessing and managing environmental and social risk.

The Bank is however concerned by the protests this project has generated, and has raised theses views with the client and the other lenders. Furthermore, Société Générale is one of the banks that had discussions with a representative of the Standing Rock Sioux tribe.

Société Générale took note of the recent US government decision to issue all necessary easements which give the green light to complete the construction of the project.

The Bank cannot withdraw from the project due to its contractual commitment to the financing alongside other French and international banks. It is therefore not legally possible to step away at this stage.

Société Générale will continue to closely monitor the situation. The Bank urges all parties to reach a peaceful resolution within respect of the rule of law, through processes afforded by the Court system.

02/12/2016 - Financing of the Dakota Access Pipeline project in the USA

Société Générale is one of several banks involved in the financing of the Dakota Access Pipeline project located in the United States of America.

In the framework of its business activities, Société Générale only supports projects that are in compliance with all the rules and regulations in the jurisdiction in which it operates and in accordance with the Group's Environmental and Social (E&S) General Guidelines and with the risk management framework of the Equator Principles adopted by financial institutions for determining, assessing and managing environmental and social risk. These principles include respect of human rights, and in particular of the rights of indigenous people.

In light of the protests against the construction of the project, and in particular the Standing Rock Sioux Tribe's views that their rights have not been respected, Société Générale has raised these views with the project's sponsors. The bank will continue to closely monitor the situation with the project's sponsors and the other lenders.

On 4th December , US federal administration decided to halt construction, calling for a full environmental review and re-evaluation of whether the pipeline’s route should be altered. *(Updated 12/04/2016)*

In order to assist and seek a resolution, Foley Hoag LLP, an independent human rights expert, has been retained to advise the lenders to the Dakota Access Pipeline and to review various matters related to the permitting process, including compliance with applicable law related to consultations with Native Americans. This review will include the evaluation of policies and procedures employed by the project’s sponsors, in the areas of security, human rights, community engagement and cultural heritage. Following this review, the independent expert will develop recommendations for improvements in line with international standards with respect to the sponsors’ social policies and procedures going forward. The lenders understand that the sponsors will review and consider all of the recommendations.

MAY 8, 2017

Update: TD addresses involvement with the Dakota Access Pipeline

Update - May 9th, 2017

On behalf of the lending syndicate and in partnership with Citi, TD commissioned Foley Hoag to better understand the complex issues involved in the Dakota Access Pipeline. TD thanks Foley Hoag for their insights and recommendations on managing the social impacts of oil pipelines in the United States. The summary of the recommendations are publicly available, and we believe they provide valuable guidance to the industry, especially around engagement with indigenous peoples and bridging the gap between current U.S. law and international industry best practices. Drawing upon their findings, TD is reviewing its due diligence policies and making improvements, where appropriate. TD will continue to be a constructive partner in the responsible development of natural resources by promoting a balanced approach towards environmental, social and economic concerns.

The below article was posted to the TD Newsroom on February 19th, 2017

TD's commitment to the environment is a source of great pride for many employees, customers and shareholders. The bank has set out a goal of being an environmental leader and has succeeded in a number of ways: as North America's first carbon neutral bank, as a global leader in underwriting green bonds, by using 100% green electricity, and through financing green energy businesses.

Recently however, TD has been placed in the spotlight for its participation in the Dakota Access Pipeline (DAPL) lending syndicate. The pipeline project has garnered a great deal of interest in the U.S. and Canada, in large part due to the protests along one portion of the pipeline project near the Standing Rock Sioux Reservation. These developments have highlighted that gaining a "social license" is complex and can go beyond compliance with regulatory and permitting processes.

Some have asked TD: "why won't you divest from the project?" TD is not an investor in the Dakota Access Pipeline; TD Securities is a lender in a banking syndicate with 16 other banks and contractually obligated to fulfill the project financing agreement that is associated with pipeline construction.

TD's Chief Environment Officer has fielded calls from customers, shareholders and members of the public on the pipeline project, wanting to understand TD's position. "TD is concerned about a number of issues and we continue to make our views known publicly as well as privately to Energy Transfer Partners," says Karen Clarke-Whistler. While the dispute is ongoing, TD is urging for a safe and peaceful resolution.

Feedback from customers was a big factor in why TD helped secure an independent human rights expert to advise ETP and Sunoco Logistics on their human rights practices moving forward. The report is expected to be completed in the coming weeks and Clarke-Whistler is hopeful that it will provide learnings for future projects. Has the public reaction to the project affected TD's overall policy when it comes to participating in traditional energy projects? TD recognizes that the energy sector is in a state of transition toward a lower carbon economy, with rapid growth in renewable energy supply for electricity. Energy security is also a driver of change. Traditional energy transportation projects such as pipelines will continue to be an important component for some time to come.

When asked how TD plans to approach future oil and gas transportation projects, the North American bank has a pragmatic view. "We operate primarily in economies with abundant energy resources and strong related industries - products required for citizens' prosperity, comfort, and daily living needs, and they represent millions of jobs within their footprint," states Glenn Gibson Vice Chair and Regional Head USA, TD Securities. Although, conventional energy financing comprises only 1.5% of TD's lending portfolio, Gibson says TD takes their responsibilities in this area seriously. "We have strong due diligence processes in place because we will only finance responsible resource development that appropriately balances environmental, economic, and social considerations." TD is also a signatory to both the Equator Principles and the United Nations Principles for Responsible Investment.

Clarke-Whistler recognizes that many of us feel passionate about issues relating to climate change. "These are complex problems. And, at the end of the day, I'm a big believer that corporations like TD can play a constructive role in fostering not just economic opportunity for communities, but also an ambitious environmental agenda."

Highlights: Support for Cleaner Energy

- Carbon neutral since 2010, with 100% of our electricity from renewable sources.
- Issued Canada's first low carbon green bond in 2014; and a leader in green bond underwriting.
- Contributor of reports and information in relation to carbon policy through TD Economics.
- Over 97% of lending in 2015 was to business sectors that are not considered to be high emitters of greenhouse gases.
- Financed $1.6 billion of low carbon initiatives in 2015, representing an increase of 84% since 2010.
- During the last five years, TD has done over $10 billion in "clean energy" financing

Source: TD Website

Additional information about TD's approach to the environment is available in the 2015 Corporate Responsibility Report: http://www.td.com/corporate-responsibility/index.jsp

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TD's Approach to Energy Development: Economic opportunity and Environmental sustainability

Economic growth and environmental sustainability are intrinsically linked - and TD believes that we have a positive role to play in fostering both. We operate primarily in Canada and the U.S., in economies that are heavily resource-based and commodity driven. North America's abundant energy supply means that these sectors remain contributors of jobs and economic prosperity for many communities. Over 3.6 million Americans work in traditional energy industries and in Canada, more than 900,000 jobs support the energy sector. Two-way energy trade between Canada and the U.S. was $124 billion in 2015 alone. As a North American bank, we support these industries, as well as the people and communities that rely on them. We are also passionate supporters of the new clean energy economy.

Responsible development of resources should balance environmental, social and economic considerations. TD employs rigorous sector specific due diligence to ensure that the resource development companies that we finance have strong policies and processes that comply with regulation - and where necessary, go beyond those strict requirements. We also review this performance on a regular basis, and engage with our clients to address concerns that arise.

The transition to cleaner energy will take place over time, during which the mix of conventional and renewable energy sources will gradually change. However, even as renewable energy quickly becomes cheaper and more viable, global demand for energy from natural gas and oil will continue for such basic needs as transportation, heating and cooling, and power to support our manufacturing and services sectors. In addition, technological advances will continue to reduce the greenhouse gas impact associated with the production and consumption of all types of energy.

TD works with industry and environmental stakeholders and Indigenous communities, to actively encourage dialogue and develop guidance for good practice in managing issues related to resource development. We also recognize that resource development can raise issues around Indigenous rights. These are complex issues that are evolving through engagement with governments, the legal system, and corporate practice. TD recognizes that Free Prior and Informed Consent (FPIC) of indigenous peoples is becoming an increasingly important factor in securing social license. This is a challenging and rapidly evolving area that can require consideration of international standards, legal decisions, government to government issues, and project development considerations. TD has been an advocate for development of practical guidance for implementation of FPIC at a project level. Since 2012 we have worked with multi-stakeholder groups to produce a number of guidance documents'. We believe that strong partnerships and productive dialogue with Indigenous peoples is both essential and beneficial to energy project planning and construction.

Source: TD Website

Wells Fargo’s involvement in funding the Dakota Access Pipeline

The company is balancing its commitments to multiple stakeholders as the dispute continues.

February 8, 2017
Wayne Thompson

Wells Fargo’s participation in financing the construction of the Dakota Access Pipeline has put the company in the news in recent weeks, led to demonstrations at multiple Wells Fargo branches and corporate offices, and prompted some customers to reconsider their business with the company.

Protesters have focused much attention on the banks financing the construction of the pipeline, including Wells Fargo, and raised concerns about Wells Fargo’s commitment to environmental sustainability, the rights of indigenous peoples, and the company’s process for making investments in energy projects.

The Seattle City Council’s Feb. 7 vote to sever ties with Wells Fargo after its financial-services contract with the bank ends in 2018 was the first such action by a municipality specifically over the pipeline, and has been followed by some other municipalities. A column in the *Puget Sound Business Journal* questioned that decision, highlighting Wells Fargo’s multi-faceted contributions to the community, region and state, and the illegality and discriminatory nature of basing lending decisions to qualified applicants on the economic sectors their businesses represent or an individual’s political views.

On Feb. 28, 2017, Phil Smith, head of Government and Institutional Banking at Wells Fargo, wrote a letter to the Seattle City Council highlighting the company’s 18-year record as the city’s bank and other contributions to Seattle.

These are the essential facts regarding Wells Fargo’s involvement in the Dakota Access Pipeline.

The Dakota Access Pipeline

The Dakota Access Pipeline is a $3.78 billion project designed to move crude oil currently delivered by truck, train, and other older pipes from North Dakota to Illinois, where it could be transported to refineries on the Gulf Coast or East Coast. The pipeline is expected to move approximately 470,000 to 570,000 barrels of crude oil a day. About 8.9 million to 10.8 million gallons of gasoline could be made a day from that amount. Americans used about 385 million gallons of gasoline daily in the U.S. in 2015, according to the U.S. Energy Information Administration.

Source: Wells Fargo website

The proposed path for the pipeline runs 1,172 miles across North Dakota, South Dakota, Iowa, and Illinois. Developers of the project have now secured all necessary state, local, and federal right-of-way approvals, and the pipeline is nearly complete.

The remaining section of the project, which required approval by the U.S. Army Corps of Engineers, will transport the crude oil under a reservoir on the Missouri River known as Lake Oahe, near the Standing Rock Sioux Reservation in North Dakota.

This section of the pipeline has been the focus of intense and nuanced dispute, with passionate and vocal parties on all sides of the issue. President Donald Trump recently signed a series of executive orders to advance approval of both the Dakota Access and Keystone XL oil pipelines. The order reversed the Obama Administration's decisions in November 2015 to deny approval of the Keystone project altogether and, in December 2016, to deny the easement needed for construction to continue on the Dakota Access Pipeline.

The U.S. Army has now notified Congress that the Corps will grant the final permit for the Dakota Access Pipeline to cross under Lake Oahe so the project can be completed. The approval was noted Feb. 7 in court filings by the Justice Department which included letters to members of Congress from Deputy Assistant Army Secretary Paul Cramer.

Wells Fargo's involvement

Wells Fargo is not the lead bank on the project. Wells Fargo is one of 17 banks that have made a loan to the developers of the pipeline. The company is lending $120 million — 4.8 percent of the total financing — to the project's $2.5-billion credit facility. The additional $1.28 billion required for the project is being funded by the pipeline's owners.

While Wells Fargo fully respects concerns being expressed, as with other financing agreements, the bank is legally obligated to satisfy the requirements as a lender if all conditions of the credit agreement are met, said Bart Schouest, head of Wells Fargo's Energy Corporate Banking Group.

"Wells Fargo is a company that serves a broad range of industries and constituents by providing financing that supports economic development to satisfy needs within our markets. While there are times when constituents have different interests around a particular project, our businesses will continue to support our customers on both sides of the issue — in this particular case, the pipeline owners and the Standing Rock Sioux Tribe," said Schouest.

In September, a campaign against the banks financing the pipeline began in earnest. On Nov. 15, designated a "National Day of Action" by pipeline opponents, demonstrations took place at Wells Fargo locations in 17 states, beginning a stream of largely peaceful, coordinated protest activity that has occurred at Wells Fargo locations in the weeks following.

Cora Gaane, the Tribal Advocacy relationship manager for Strategic Philanthropy in Wells Fargo Government and Community Relations, has been meeting with those who serve tribal entities

Source: Wells Fargo website

across the U.S. to hear their concerns. Shortly after the protests began onsite in North Dakota, Gaane joined Wells Fargo senior leaders from Corporate Banking, Environmental Affairs, and the Business Banking relationship team in a meeting with leaders from the Standing Rock Sioux Tribe, with whom the company's relationship spans decades, and the nonprofit First Peoples Worldwide, to hear their concerns about Wells Fargo's involvement in the pipeline.

"Our Wells Fargo relationship managers, senior leaders, community development officers, and retail banking team members located near tribal communities are responding to inquiries and listening to our stakeholders to make sure we understand and address their concerns while working through all aspects of the issues related to the DAPL project," Gaane said.

Wells Fargo is one of the largest lenders to the energy sector, supporting the responsible development of all forms of energy. The bank has a 40-year history financing traditional energy projects and makes sizeable investments in renewable energy and clean technology through its Clean Tech and Environmental Finance businesses. Since 2012, the company has invested more than $70 billion in environmentally sustainable businesses. In 2015, projects owned in whole or part by the company produced 10 percent of all solar photovoltaic and wind energy generated in the U.S.

At the same time, multiple Wells Fargo banking units also have been serving Native American tribes for more than 50 years, providing capital and financial services to the Standing Rock Sioux Tribe and more than 200 tribal entities in 27 states. To date, Wells Fargo has loaned $2 billion to tribal entities, and made $44 million in tax credit investments, including financing Low Income Housing Tax Credit projects in nine states (Arizona, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, and Wisconsin), and sponsoring Affordable Housing Plan subsidies for tribal housing projects.

Since 2013, Wells Fargo has also provided more than $16 million to tribal nonprofit organizations, and in 2016 announced a three-year, $3 million educational grant to benefit students from both federally and state-recognized tribes.

Due diligence and hope for a 'peaceful resolution'

While assessing the project for a loan, as with all similar projects, Wells Fargo went through an extensive due diligence process. In this case, the company worked with the independent engineer and the lenders' legal counsel to ensure that the project complied with all local, state, and federal laws, and that potential cultural and environmental impacts were addressed.

Mary Wenzel, head of Wells Fargo Environmental Affairs, said the due diligence process included verifying that the project complied with the Equator Principles — a global framework designed to determine, assess, and manage social and environmental risks and impacts of projects such as the Dakota Access Pipeline.

Source: Wells Fargo website

“As a result of what we have learned from the ongoing dispute, we have enhanced our own due diligence in sectors subject to our Environmental and Social Risk Management policy,” said Wenzel. “We have also developed an Indigenous Peoples Statement, which will help guide our decision-making for projects where proceeds of Wells Fargo financing may potentially impact Native American, Native Alaskan or other indigenous communities.”

“This is a sensitive issue that we have worked diligently to address with great care,” said Jon Campbell, head of Wells Fargo Government and Community Relations. “As a company committed to environmental sustainability and human rights, we respect all the differing opinions being expressed in this dispute, and hope all parties involved will work together to reach a peaceful resolution.”

Source: Wells Fargo website

Indigenous Peoples Statement

Our Commitment to Native American Governments, Communities and Indigenous Peoples

Wells Fargo has been serving American Indian, Alaska Native, and Native Hawaiian communities in the United States for more than 50 years. We have dedicated team members focused on serving these communities with products, services and financial education programs tailored to help tribal governments, tribal enterprises, and tribal members succeed financially.

Today we provide capital and financial services to more than 200 tribal entities in 27 states and have credit commitments of more than $2 billion to tribal entities and $44 million in tax credit investments, including financing for community development projects in 4 states, Low Income Housing Tax Credit projects in nine states and sponsoring Affordable Housing Plan subsidies for tribal housing projects. Additionally, to best serve our Native American customers, we currently operate 19 branches and 42 ATMs on 17 reservations in seven states.

Over the past four years, we have provided more than $16 million in philanthropic support to hundreds of tribal and native nonprofit organizations nationwide for community services that benefit Native American communities and indigenous individuals.

- A signature project is our three-year, $3 million grant to the American Indian Graduate Center (AIGC) to support an outreach and engagement program that encourages American Indian and Alaska Native students to seek scholarships and other educational services available through AIGC.
- In 2016, Wells Fargo donated $540,000 to two Native Community Development Financial Institutions. Four Bands in Eagle Butte, S.D. received $300,000 for technical assistance and to expand its service area, and the Northwest Native Development Fund received $240,000 to increase lending to Native American entrepreneurs.

In addition, Wells Fargo's Native Peoples Team Member Network encourages team members to engage with and build understanding and support for the American Indian, Alaska Native, and Native Hawaiian communities that Wells Fargo serves, and to provide insight into Native American cultures.

While the government of the United States provides formal recognition to American Indians and Alaska Natives for purposes of this statement we use the term Indigenous Peoples to be inclusive of these communities and others that may or may not be afforded the same recognition in their countries.

Our Respect for the Rights of Indigenous Peoples

As expressed in Wells Fargo's Human Rights Statement, we recognize that governments have the duty to protect human rights, and our company has a responsibility to respect human rights.

We recognize that the identities and cultures of Indigenous Peoples are inextricably linked to the lands on which they live and the natural resources, including air and water, upon which they depend. We acknowledge that Indigenous Peoples, as social groups, can be among the most marginalized and vulnerable members of the global population.

We respect Indigenous Peoples' rights to determine their own way of life on their own lands, according to their time-honored cultures, traditions, and beliefs. We recognize the rights of these communities to meaningful and appropriate consultation regarding issues affecting their sacred lands and natural resources – traditionally owned or otherwise occupied and used – today and for future generations.

Our Approach to Responsible Finance

In circumstances where we believe risks and impacts are material to the long-term success of companies or could have severe adverse impacts on the environment or communities, we perform industry-, issue-, or transaction-specific environmental and social risk due diligence to evaluate a customer's commitment, capacity, and track record as they relate to environmental and social risk management (ESRM).

We conduct due diligence in sensitive industries covered by our Environmental and Social Risk Management Policy (PDF) to ensure that our customers engage meaningfully and effectively with critical stakeholders, and demonstrate a commitment to protecting community health, safety, and security; the environment; cultural identity; and the sacred lands and heritage of affected Indigenous Peoples. We have supplemented this due diligence with a heightened focus on potentially impacted indigenous communities, and whether or not they have been afforded the opportunity for informed consultation and participation.

- Our ESRM due diligence reviews are conducted by our ESRM team in tandem with traditional due diligence. The ESRM team operates independently from our lines of business and has particular expertise in assessing environmental and social risk.
- During new transaction approvals, renewals or material increases in exposure, risks identified in the review are incorporated into the approval process.
- For certain transactions, escalated approval from senior leaders is required.

We believe that by identifying the environmental and social impacts and management practices of our customers, we get a better understanding of their operations and long-term strengths. At the same time, our objective is to ensure that the financial services we provide do not facilitate unacceptable impacts on communities or the environment. If we do not believe a company can effectively manage elevated environmental and social risks in their operations we will decline participation in the transaction.

While we recognize that governments have the central role to play in the approval of polices or projects that impact Indigenous Peoples, we encourage our customers to collaborate in a meaningful way to manage the impacts and risks of their activities on these communities.

As a signatory to the Equator Principles, we will provide loans and advisory services only to those projects whose borrowers can demonstrate their ability and willingness to comply with the Equator Principles requirements for categorizing, assessing, and managing environmental and social risks.

For projects where we can identify that the use of proceeds may potentially impact Indigenous Peoples, we expect our customers to demonstrate alignment with the objectives and requirements of International Finance Corporation (IFC) Performance Standard 7 on Indigenous Peoples, including with respect to circumstances requiring Free, Prior and Informed Consent. These objectives include:

- To ensure that the development process fosters full respect for the human rights, dignity, aspirations, culture, and natural resource-based livelihoods of Indigenous Peoples;
- To anticipate and avoid adverse impacts of projects on communities of Indigenous Peoples, or when avoidance is not possible, to minimize and/or compensate for such impacts;
- To promote sustainable development benefits and opportunities for Indigenous Peoples in a culturally appropriate manner;
- To establish and maintain an ongoing relationship based on informed consultation and participation with the Indigenous Peoples affected by a project throughout the project's life-cycle;
- To ensure the Free, Prior, and Informed Consent of the Affected Communities of Indigenous Peoples when the circumstances described in Performance Standard 7 are present;
- To respect and preserve the culture, knowledge, and practices of Indigenous Peoples.

Assembly Bill No. 20

CHAPTER 575

An act to add Section 7513.72 to the Government Code, relating to public employee retirement systems.

[Approved by Governor October 8, 2017. Filed with Secretary of State October 8, 2017.]

legislative counsel's digest

AB 20, Kalra. Public employee retirement systems: divestment: Dakota Access Pipeline.

The California Constitution authorizes the Legislature to prohibit, by statute, investments of a retirement board if it is in the public interest to do so and if the prohibition satisfies the board's standards of fiduciary care and loyalty.

Existing law prohibits the boards of administration of the Public Employees' Retirement System and the State Teachers' Retirement System from investing funds in a company with active business operations in Sudan, as specified, from investing in a company that has certain business operations in Iran, as specified, and from investing in thermal coal companies, as defined.

This bill would require the boards of administration of the Public Employees' Retirement System and the State Teachers' Retirement System to make a specified report, on or before April 1, 2018, to the Legislature and the Governor regarding investments in the Dakota Access Pipeline, as defined. The bill would declare the intent of the Legislature that the boards, on or before April 1, 2018, review and consider factors related to tribal sovereignty and indigenous tribal rights as part of the boards' investment policies related to environmental, social, and governance issues. The bill would provide that it does not require a board to take any action unless the board determines in good faith that the action is consistent with the board's fiduciary responsibilities established in the constitution. The bill would make additional related legislative findings and declarations.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The Dakota Access Pipeline that is being built in the southern region of North Dakota was originally planned to run north of Bismarck, North Dakota, but for a variety of reasons, including environmental concerns regarding potential harm to the water supply of Bismarck and surrounding communities, it was rerouted south.

(b) The Dakota Access Pipeline is now routed just north and upstream of the Standing Rock Sioux Reservation. Thousands of people representing over 200 indigenous tribes have set up camp in an effort to block the construction of the pipeline through sacred land and, most significantly, to protect the water supply that the Sioux tribe there relies upon for its survival.

(c) The hostility of local law enforcement and the North Dakota National Guard against unarmed protestors has reached dangerous levels. In recent confrontations, law enforcement has used water cannons against unarmed protesters in frigid temperatures, in addition to the ongoing use of rubber bullets and chemical agents.

(d) As Californians, we must hold ourselves to a high standard of conduct, including how we invest our pension funds. This includes, morally and fiscally, the millions of dollars that the Public Employees' Retirement System and the State Teachers' Retirement System have invested in the Dakota Access Pipeline.

SEC. 2. Section 7513.72 is added to the Government Code, to read:

7513.72. (a) As used in this section:

(1) "Board" means the Board of Administration of the Public Employees' Retirement System or the Teachers' Retirement Board of the State Teachers' Retirement System, as applicable.

(2) "Company" means a sole proprietorship, organization, association, corporation, partnership, venture, or other entity, or its subsidiary or affiliate, that exists for profitmaking purposes or to otherwise secure economic advantage.

(3) "Dakota Access Pipeline" means the oil pipeline connecting the Bakken oil fields in northwest North Dakota to Illinois, traveling through South Dakota and Iowa, that runs north and upstream of the Standing Rock Sioux Reservation.

(4) "Investment" means the purchase, ownership, or control of publicly issued stock, corporate bonds, or other debt instruments issued by a company.

(5) "Public employee retirement funds" means the Public Employees' Retirement Fund described in Section 20062 of this code and the Teachers' Retirement Fund described in Section 22167 of the Education Code.

(b) On or before April 1, 2018, the board shall file a report with the Legislature, in compliance with Section 9795, and the Governor that shall include the following:

(1) A list of investments the board has in companies constructing, or funding the construction of, the Dakota Access Pipeline.

(2) A list of companies identified pursuant to paragraph (1) with which the board has constructively engaged, including:

(A) A detailed description of the board and its staff's engagement activities with each company, including, but not limited to, the number of engagement interactions with each company.

(B) A detailed description of the results of the engagement, including, but not limited to, agreements reached between the board and the company.

(C) An evaluation as to the efficacy of the engagement, including, but not limited to, whether the engagement resulted in a change of action by the investing firm or company with which funds were invested.

(c) It is the intent of the Legislature that on or before April 1, 2018, the board review and consider factors related to tribal sovereignty and indigenous tribal rights as part of the board's investment policies related to environmental, social, and governance issues.

(d) Nothing in this section shall require a board to take action as described in this section unless the board determines in good faith that the action described in this section is consistent with the fiduciary responsibilities of the board described in Section 17 of Article XVI of the California Constitution.

O